In the
Supreme Court of Ohio

THE STATE EX REL., VICTORIA K. BELTOWSKI, Relator-Appellant, v. BRADLEY J. SMITH, JUDGE SARA JO SHERICK, MAGISTRATE SANDUSKY CTY. JUVENILE COURT Respondents-Appellees	: : : : : : : : : : : :	Case No. 2013 - 0636 On Appeal from the Sandusky County Court of Appeals, Sixth Appellate District Court of Appeals Case No. S-13-001

REPLY BRIEF OF APPELLANT VICTORIA K. BELTOWSKI

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

INTRODUCTION

Appellees attempt to gloss over or dismiss with the sleight of hand the very significant ways in which the Sandusky County Juvenile Court failed to comply with Ohio's version of the Uniform Child Custody Jurisdiction and Enforcement Act as codified at Ohio Revised Code Chapter (hereinafter O.R.C.) 3127 as set forth in O.R.C. §§ 3127.01 – 3127.53.

Notably, Appellees fail to address the fact the paternal grandfather : 1.) never filed a sworn complaint alleging neglect, dependency, and/or abuse; 2.) was not previously a party to previous custody proceedings in 2009; 3.) never filed a Motion to Intervene; nor 4.) was the paternal grandfather added as a party by the Court as noted upon the Court's Docket of Proceedings. Appellees cannot explain how it is that the Sandusky County Court had jurisdiction even though the paternal grandfather was not a party. This is not a matter of the Court being mistaken as to jurisdiction and whether the paternal grandfather was a party, as matter of factly the Court record shows he wasn't. (See Appendix A – Court docket). Ohio's version of the UCCJEA at O.R.C. §3127.19(C) provides that Ohio can only join a party to an UCCJEA action if that joinder complies with the general custody laws of Ohio.

Ohio law provides that any person can file a sworn Complaint under O.R.C. §2151.27(A)(1) alleging abuse, neglect and/or dependency, but the paternal grandfather didn't do that. Ohio version of the UCCJEA makes provision for such a complaint. It does not provide for a non-party grandparent to file an unsworn Emergency Exparte Motion for Custody.

Appellees also fail to consider that the UCCJEA provides for a court with original, exclusive jurisdiction to decline jurisdiction upon Motion asserting that the Mother's and child's home was in another state for over two (2) years and that Ohio was no longer the proper forum. Mother asserted this in her first pleading: Motion to Dismiss and the Ohio Court never addressed

this. This is not just a mere assertion as no where in the Court's entries does the Court address this UCCJEA jurisdictional question of forum non conveniens and O.R.C. §3127.21(B) mandates that the Court shall consider whether it is appropriate for the Court of another state to exercise jurisdiction and if it so decides to stay these proceedings. It dos not state that Sandusky County could ignore the Motion and move forward.

This failure doubly compounds the Sandusky County Juvenile Court's error in failing to contact the Arizona Court, which was now the Mother and Child's "new home state" for more than two (2) years. Ohio's version of the UCCJEA expressly provides that a motion to modify a child's custody order in the original home state can be pending at the same time a Motion For Enforcement is pending in the child's "new home state". Appellees fail to recognize that O.R.C. §§ 3127.18(C) and (D) are not mutually exclusive under the facts of this present matter. The Ohio Court was required under the UCCJEA to immediately contact the Arizona Court under its alleged "emergency jurisdiction". Failure of the Ohio Court to do so purposefully defeated the inconvenient forum jurisdiction and ultimately lead to Arizona declining very belatedly to assume jurisdiction based upon the passage of time and Ohio's activities with the child. Clearly the Ohio Court did not comply with the UCCJEA. In several instances Ohio's version of the UCCJEA provided that the Sandusky County Juvenile Court shall do such and such. At each of these junctures the Sandusky County Juvenile Court ignored Ohio's UCCJEA.

Appellees assert that the Father did challenge the registration of the original order in Arizona but that is categorically not true. Father had twenty (20) days under Arizona law to do so and did not. Very telling is the fact that Sandusky County does not attach in its appendix any document to demonstrate their assertion.

Appellees also make no attempt to address the Appellant's assertion and proposition of law regarding the fact that the Sandusky County Juvenile Court did not enter its Magistrate's Decision on the probable cause until January 31, 2013, a full eight (8) days after the Sixth District had already issued an Alternative Writ. Clearly Sandusky County did not have jurisdiction to enter this Order and Appellant doesn't understand how much clearer the unambiguous lack of this jurisdiction has to be. The Court of Appeals essentially failed to defend its own Order and jurisdiction.

For this and the myriad of reason set forth herein, the Writ of Prohibition should have been granted and this Honorable Court should do so to rectify the clear errors caused pursuant to the wrongful jurisdiction asserted up to granting the Writ of Prohibition without remand and ordering the lower court to contact Arizona and inform Arizona that temporary orders are needed from that Court pending the Mother's and child's return there and appearance before that Court. Only in this manner can the errors of the Ohio Court be rectified in the spirit of the UCCJEA.

ARGUMENT

A. The Sandusky County Juvenile Court did not "[follow] the provisions of the UCCJA (sic)" (Appellee's Merit Brief - p.4) because: ....

1. The paternal grandfather did not meet the definition of a "Person acting as a parent" pursuant to Ohio Revised Code Section 3127.01(13).

In order for the Sandusky County Juvenile Court to comply with Ohio's version of the UCCJEA the paternal grandfather had to meet the qualifications under O.R.C.§3127.01(13) as a "Person acting as a parent".

O.R.C. §3127.01(13) provides:

> "Person acting as a parent" means a person, other than a child's parent, who meets both of the following criteria:

> (a) The person has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence from the child, within one year immediately before the commencement of a child custody proceeding; and
>
> (b) The person has been awarded legal custody by a court or claims a right to legal custody under the law of this state."

O.R.C. §3127.01(13), Lawriter 2013. It is rather obvious under the alleged facts of Mother's Complaint for Writ of Prohibition and the accompanying court document exhibits thereto that the paternal grandfather does not qualify as a person acting as a parent. Under this prong of Ohio's UCCJEA, at least, the paternal grandfather does not qualify as a proper party to a custody proceeding. Appellant does not feel the need to cite to such a foundational rule of law that a court does not have jurisdiction to grant relief to a non-party and non-parent who has not been joined to the action or otherwise qualifies as "acting as a parent".

2. The paternal grandfather was not a party pursuant to Ohio Juvenile Rule 2(Y).

The Ohio Rules of Juvenile Procedure clearly defines who or whom can be proper parties to an action in an Ohio Juvenile Court. Juvenile Rule 2(Y) specifies:

> "Party" means a child who is the subject of a juvenile proceeding, the child's spouse, if any, the child's parents or parents, or if the parent of a child is a child, the parent of that parent, in appropriate cases, the child's custodian, guardian, or guardian ad litem, the state, and any other person specifically designated by the court.

Ohio Rule of Juvenile Procedure 2(Y), Lawriter 2013. It is also clear that unless the Sandusky County Juvenile Court had previously to the Emergency filing on November 19, 2012 had designated the paternal grandfather as a party to the original action under which it was filed, that the paternal grandfather was not a party.

3. The paternal grandfather never filed a Motion to Intervene, and the Court record never addresses the same.

Ohio going back to the time of the common law provided that grandparents had no legal rights of access to or custody of their grandchildren. *In re Whitaker* (1988), 36 Ohio St. 3d 213, 214. No constitutional right exists providing for association between grandchildren and their grandparents. *In re Schmidt* (1986), 25 Ohio St.3d 331, 336. These legal strictures when combined with the Juvenile Rule 2(Y) means that for a grandparent to be joined as a party to an action in the Juvenile Court concerning the custody of that grandparent's grandchild, that grandparent must file a Motion to Intervene. In the underlying matter, paternal grandfather Gary Beamer never filed a Motion to Intervene. The Court's Docket does not list such a motion and the Court's Entries of Record do not mention such a motion nor provide the Court ruling or granting such.

4. The paternal grandfather "had never obtained, prior to a motion to intervene through statute or court order, or other means, any legal right to custody or visitation with their grand[daughter]" *In Re Goff*, 11th Dist., 2003-Ohio-6087 at ¶ 16.

The Ohio Supreme Court has long provided that before an Ohio court can consider and entertain the merits of a legal action, the person seeking relief must establish standing to be a party or assert a necessary interest in the action. *Ohio Contractors Assn. v. Bickering* (1994), 71 Ohio St.3d 318, 320. In respect to custody proceedings, a court is required to join only those parties with colorable rights to custody or visitation. *In Re Goff*, 11th Dist., 2003-Ohio-6087 at ¶ 16. More importantly, the grandparents never previously obtained any legal right to custody or visitation and thus the Court held they could not establish a right of intervention under Civ. R.24(A). *Id.*

In the underlying action herein, paternal grandfather Gary Beamer did not previously obtain any right of custody or visitation and so herein he had no right to intervene as a party unless he filed a sworn Complaint alleging neglect, dependency, and/or abuse pursuant to O.R.C.

§ 2151.27(A)(1). Any other intervention would not comply with Ohio's UCCJEA provision that provides that joinder of a non-parent can only be had under the UCCJEA when that joinder complies with the general child custody statutes of Ohio. O.R.C. §3127.19(C).

5. The paternal grandfather did not file a sworn complaint pursuant to Ohio Revised Code 2151.27(A)(1) sounding in neglect, dependency, and/or abuse and thus there was only before the Sandusky County Juvenile Court an emergency exparte motion for custody filed by a non-party and non-parent.

Ohio Revised Code Section 2151.27(A)(1) provides:

> (A)(1) Subject to division (A)(2) of this section, any person having knowledge of a child who appears to have violated section 2151.87 of the Revised Code or to be a juvenile traffic offender **or to be an unruly, abused, neglected, or dependent child may file a sworn complaint with respect to that child in the juvenile court of the county in which the child has a residence or legal settlement or in which the violation, unruliness, abuse, neglect, or dependency allegedly occurred.** (emphasis added)

O.R.C.§2151.27(A)(1), Lawriter 2013. This statute by its clear language would had provided the basis whereby the paternal grandfather arguably could have filed with the Court and attained "party" status. However, it is very clear that the paternal grandfather did not file a sworn complaint pursuant to O.R.C. §2151.27(A)(1). For whatever reason, the paternal grandfather filed a very nebulously worded emergency exparte motion sounding very superficially in neglect. Perhaps this was because the child's real residence or legal settlement was not Ohio, but Arizona. In the final analysis, a sworn complaint under O.R.C.§2151.27(A)(1) could have been filed by the grandfather without prior "party" status to the underlying custody action. The emergency exparte motion filed by the paternal grandfather could not be entertained by the Court properly without the paternal grandfather moving to intervene, since he did not already have standing as the child's custodian.

Understood properly in this context, the Juvenile Court did not have jurisdiction to consider under the guise of a probable cause hearing, nebulous statements regarding neglect when a proper sworn Complaint under O.R.C.§2151.27(A)(1) had not been filed, but rather a exparte motion filed by a non-party. Nor can it be said that the Appellant by her actions has acquiesced or allowed the Court to go forward without challenging the paternal grandfather's lack of party status. Appellant has done so, but it has fallen on deaf ears.

6. The Juvenile Court of Sandusky County did not have statutory nor jurisdictional authority to grant relief to a non-party as there were no properly pending matters before the Court and Ohio Revised Code Section 3127.19(C) provides that Ohio may properly only join a party pursuant to the UCCJEA when that joinder complies with the general custody laws of Ohio.

It should be clear at this juncture that the paternal grandfather could not pursuant to some nebulously worded exparte emergency motion invoke the custody jurisdiction of the Sandusky County Juvenile Court and act and be treated as a party with equal standing to a parent without first filing a motion to intervene. Yes, the Sandusky County Juvenile Court has child custody subject matter jurisdiction but it has no authority or jurisdiction to entertain the reopening of a custody matter by a pleading from a non-party without clear statutory or procedural authority to do so. To do so does not comply with Ohio's UCCJEA at 3127.19(C).

Nor does the holding in *In re Perales*, 1997) 52 Ohio St.2d 89 lead to a different conclusion. In that case there was no prior custody order established by the Court. In the case herein, the Appellant was designated the child's custodial parent in December of 2009. The paternal grandfather was never a custodian of the child previously nor did he ever have custody of the child pursuant to an agreement between the Mother and he.

B. As applied to the present matter, the dictates of Ohio Revised Code Sections 3127.18(C) and (D) are not mutually exclusive and the Sandusky County Juvenile Court was responsible to comply with both sections of the statute, as an proceeding ostensibly brought to modify an original order in the former "home state" does not preclude a complaint to enforce the original

order in the new "home state" given that the Father DID NOT (emphasis added) timely object to the registration in Arizona.

Appellees in their merit brief assert in their statement of facts that Appellant was incorrect in asserting that the Father did not object to the registration of the Ohio Order of 2009 with Arizona pursuant to Mother's filing there on December 17, 2012 in Appellant's Merit Brief. This assertion is blatantly incorrect. Pursuant to Arizona law the Father had to file Objections with the Arizona Court within 20 days of service. He did not and the failure of the Appellees to attach evidence of filing of timely objections with the Arizona Court is very telling. It is not attached as the same does not exist.

Appellees claim that since Ohio had original exclusive continuing jurisdiction as the original "home state" of the child at the time of the 2009 order that only O.R.C. § 3127.18(C) applies to the Sandusky County Court and that the Order of January 30, 2013 remained in effect until an Order was obtained from Arizona. First and notably, Sandusky County fails to consider that its Order of January 30, 2013 was issued after the Sixth District issued an Alternative Writ on January 23, 2013. Therefore without question, Sandusky County was rather unambiguously without jurisdiction to enter the Magistrate's Decision of January 30, 2013.

However nothing in O.R.C.§3127.18(C) states that O.R.C.§3127.18(D) does not apply as well. Pursuant to the underlying facts of this case it is obvious that Mother had commenced a child custody proceeding in Arizona when she sought enforcement there by her filing with Arizona on December 17, 2012, which was before Sandusky County even commenced a probable cause hearing on December 20, 2012. O.R.C.§3127.18(D) provides that a Court of this state which is asked to make an emergency custody determination (which Sandusky County arguably was) upon being informed a custody action has been commenced in another state

having jurisdiction (which Ohio was informed of on December 20, 2012) "shall immediately communicate".

This section of the statute provides that Sandusky County in order to comply with Ohio UCCJEA had to immediately communicate with Arizona. The Sandusky County Court clearly did not do so as it knew that since Mother and the child had been in Arizona for over two (2) years that Ohio was no longer the proper convenient forum under O.R.C.§3127.21. By the time Ohio belatedly decided to contact Arizona in late February or early March of 2013, the Arizona Court gave credence, it is believed, to the Ohio Court's assertion that now professionals were treating the child in Ohio. The Arizona Court then determined that it was no longer the proper forum. Appellant cannot say what transpired as the Sandusky County Court did not provide for Appellant to be involved with the communications with the Arizona Court.

This is matter of first impression but it appears that this Honorable Court needs to hold that Sandusky County was without jurisdiction to continue to move forward with temporary emergency jurisdiction after December 20, 2012 when it failed to obey the statutory command that it had to immediately communicate with Arizona. This conclusion and analysis is made all the more proper when it is noted that the Appellant Mother in her first pleading filed a Motion to Dismiss based in part on the assertion that Ohio had become a "forum non conveniens".

C. The Sandusky County Juvenile Court erred as a matter of law in continuing to assert UCCJEA jurisdiction of this matter when Mother's first filing as a Motion to Dismiss with the Court expressly alleged that Sandusky County was an inconvenient forum or improper forum under the UCCJEA due to the Mother and child's lawful presence in Arizona for over two years and the Court failed to address that matter and the record establishes the same.

The record in the underlying matter establishes that Appellant Mother filed a Motion to Dismiss based upon the Sandusky County Juvenile Court's lack of jurisdiction, including in part, an express assertion that Ohio was now "forum non conveniens" since the Mother and child had

lived in Arizona for over two (2) years. O.R.C. §3127.21 provides what a \n Ohio Court must do when it is presented with a motion asserting "forum non conveniens".

R.C. 3127.21(B) provides that:

> Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including the following:
> (1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;
> (2)The length of time the child has resided outside this state;
> (3) The distance between the court in this state and the court in the state that would assume jurisdiction;
> (4)The relative financial circumstances of the parties;
> (5) Any agreement of the parties as to which state should assume jurisdiction;
> (6)The nature and location of the evidence required to resolve the pending litigation, including the testimony of the child;
> (7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence;
> (8)The familiarity of the court of each state with the facts and issues in the pending litigation.

Jason R. Witt v. Paula Walker, (2nd Dist., March 1, 2013) 2013-Ohio-714 at ¶21. Although O.R.C. §3127.21(A) states that an Ohio may decline to exercise jurisdiction, O.R.C. §3127.21(B) states that upon the issue being raised, "a court of this state [SHALL] consider whether it is appropriate for a court of another state to exercise jurisdiction".

The Sandusky County Court was obligated upon the Appellant's Motion to actually consider the factors in O.R.C.§3127.21(B). It did not do so and the Court's journal entries and docket makes this point crystal clear. It cannot be considered as presumed that the Court considered the factors herein when there was no hearing nor opportunity given to submit evidence upon the point. If the Court considered the same, then its Journal Entries would address

the same issue at least in passing. It does not. Assuming the Court should have held a hearing and did not and that it is an unassailable fact that the Mother and child lived in Arizona for over two (2) , then it can be said that the exceeded its jurisdiction. Strictly speaking, there should be some bright line rule in this regard. The UCCJEA makes the six month term dispositive of the "home state" matter. Other courts has said that absence of year or more is presumed to render the original jurisdiction a "forum non convenierns." See *Whitt v. Walker* (supra).

D. The Sandusky County Juvenile Court patently did not have jurisdiction to enter the Order of January 30, 2013 when the Sixth District Court of Appeals entered an Alternative Writ on January 23, 2013 and the Court of Appeals thus failed to enforce its own jurisdictional authority.

This assertion of argument is rather unassailable. The Sandusky County Juvenile Court entered a Probable Cause Decision/Order on January 30, 2013. The Sixth District issued an Alternative Writ in this matter on January 23, 2013. Sandusky County Juvenile Court did not have jurisdiction to enter the Order of January 30, 2013. The Sixth District rather clearly failed to protect and assert the propriety and the preemptive nature of its assertion of jurisdiction.

E. The paternal grandfather clearly engaged in unjustifiable conduct since his actions in keeping the minor child without the permission of the child's Mother or the maternal grandmother in whose custody the Mother left the child while temporarily in Arizona to take a job so she and the child could return there. Maternal grandmother needed the Clyde Police to retrieve the child for the Mother but yet the paternal grandfather filed an UCCJEA Affidavit with his emergency filing saying that had solely been taking care of the child. The paternal grandfather's actions violate Ohio Revised Code Section 2919.23 and constitute a crime under the laws of the State of Ohio. The Juvenile Court failed to decline to assert jurisdiction under the UCCJEA even though the Mother asserted this in her first filing as a Motion to Dismiss and the Court never address this in its entries .

The matters set forth in this point of argument are rather well established in the Appellant Mother's Complaint for a Writ of Prohibition. The Police report setting forth the facts of the incident in question is attached to the Complaint and incorporated pursuant to Ms. Beltowski's verification of the Complaint. It is rather apparent as stated in Appellant's Merit Brief that the paternal grandfather did not like his granddaughter being in Arizona and the Mother states in her

Complaint that she left the child with her Mother on November 6, 2012 in order to go to Arizona to take job with Walgreen's , which she asserts she did on November 9, 2012. The paternal grandfather asked to keep the minor child for a couple of days and the maternal grandmother assented. On November 13, 2012 the paternal grandfather refused to return the child and stated to the police upon intervention that "his attorney advised him to do so". The child was then returned to the maternal grandmother. On November 19, 2012 the paternal grandfather filed an emergency ex parte motion alleging he and his girlfriend had the child by default, since the child had been abandoned, even though this was transparently untrue. These facts are all demonstrably untrue else the Clyde, Ohio Police report from a objective third party stating otherwise would be untrue that the child was returned to the maternal grandmother.

The paternal grandfather was clearly concerned that the Mother would return from Arizona with a new job and immediately return to Arizona with the child. This is the only logical explanation as to why the suddenly on November 19, 2013 the paternal grandfather filed a motion (without moving to intervene and become a party) alleging nebulous undefined assertions of neglect despite the fact that the grandchild had been back in Ohio for 74 days on November 19, 2012; and despite the further fact that no mandatory reporters had reported any concerns of neglect or abuse.

O.R.C. §3127.22(A) of Ohio's UCCJEA provides that: " ... if a court of this state has jurisdiction under this chapter because a person seeking to evoke its jurisdiction has engaged in unjustifiable conduct, the court **shall decline to exercise its jurisdiction**". O.R.C. §3127.22(A), Lawriter 2013. The paternal grandfather took the child so he could claim that only he had been taking care of the child since the Mother abandoned the child when she left town. He filed under ex parte emergency jurisdiction again stating the child has been abandoned and they didn't know

how to get a hold of the Mother and that they had the child since November 9, 2012. These facts are all "trumped-up" and false. The fact that some of these same facts were put in the paternal grandfather's UCCJEA Affidavit compounds the gravity of this unjustifiable misconduct.

What is clear is that when a statute states that under certain facts a court SHALL DECLINE JURISDICTION means that the power to act or assert jurisdiction has been taken away. Given these clear and unassailable assertions contained in Appellant's Writ of Prohibition, since allegations of a complaint must taken as true pursuant to a Motion to Dismiss, then the Sixth District clearly erred in dismissing the Complaint for a Writ of Prohibition and the same was clearly erroneous and contrary to law. This conclusion is actually rather mandated since the actions of the paternal grandfather in withholding the child without a custody order is a crime.

2919.23 Interference with custody.

(A) No person, knowing the person is without privilege to do so or being reckless in that regard, shall entice, take, keep, or harbor a person identified in division (A)(1), (2), or (3) of this section from the parent, guardian, or custodian of the person identified in division (A)(1), (2), or (3) of this section:

(1) A child under the age of eighteen, or a mentally or physically handicapped child under the age of twenty-one;

(2) A person committed by law to an institution for delinquent, unruly, neglected, abused, or dependent children;

(3) A person committed by law to an institution for the mentally ill or mentally retarded.

(B) No person shall aid, abet, induce, cause, or encourage a child or a ward of the juvenile court who has been committed to the custody of any person, department, or public or private institution to leave the custody of that person, department, or institution without legal consent.

(C) It is an affirmative defense to a charge of enticing or taking under division (A)(1) of this section, that the actor reasonably believed that the actor's conduct was necessary to preserve the child's health or safety. It is an affirmative defense to a charge of keeping or harboring under division (A) of this section, that the actor in good faith gave notice to law enforcement or judicial authorities within a reasonable time after the child or committed person came under the actor's shelter, protection, or influence.

(D)

(1) Whoever violates this section is guilty of interference with custody.

(2) Except as otherwise provided in this division, a violation of division (A)(1) of this section is a misdemeanor of the first degree. If the child who is the subject of a violation of division (A)(1) of this section is removed from the state or if the offender previously has been convicted of an offense under this section, a violation of division (A)(1) of this section is a felony of the fifth degree. If the child who is the subject of a violation of division (A)(1) of this section suffers physical harm as a result of the violation, a violation of division (A)(1) of this section is a felony of the fourth degree.

(3) A violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree.

(4) A violation of division (B) of this section is a misdemeanor of the first degree. Each day of violation of division (B) of this section is a separate offense.

O.R.C.§2919.23, Lawriter, 2013.

It should be noted that the statute's provision regarding an affirmative defense as to the taking of the child and keeping does not apply because the paternal grandfather did not contact law enforcement, but actually law enforcement only found out when the maternal grandmother used the police to get Jaidyn back into her care where the custodial parent left her. Appellees are really straining credibility to assert that although the paternal grandfather committed a crime, that the Court needs a full hearing to determine the same. If the same were true this statutory section would never come into play because it would only be after the Court had already exercised jurisdiction that it would be determined that the Court erred in doing so. This result doesn't withstand minimal scrutiny.

E. The Appellant and the minor child herein cannot be considered to have an adequate remedy at law by way of subsequent latter appeal as the citations of authority set forth by Appellees are not on point as the Mother and Child at the time of these matters have a "home state" as a matter of law that is different from the paternal grandfather.

Appellees cite to different cases for the proposition that the Appellant regardless will have a later adequate remedy by way of appeal. These cases are inapposite to the facts involved in a interstate custody case where a failure to follow the UCCJEA can have irreversible effects. For instance in such cases even some courts have held that the denial of inconvenient forum motion in an interstate context must provide for an immediate appeal as a later appeal cannot possibly provide for appropriate relief. *Buzzard v. Triplett,* (10th. Dist., Mar. 28, 2006) 2006-Ohio-1478 at §11. So much more so would be the case where a party moves to another state and remains there for years but yet through misconduct of another party ends up defending a custody action in an original home state where the parent and the child haven't resided in years. When given that this case is prosecuted by a grandparent who does not even share the preeminent right to the custody and care of their child as does a parent, then the promise of a later appeal in this matter is hallow, empty and violative of the parent's rights under the U.S. Constitution.

Even more apparently there is no adequate remedy herein where Sandusky County by its actions has purposely not followed the UCCJEA terms and communicated immediately with Arizona leading to the result that after months of delay the Arizona Court declined to insert itself in the present "mess" since Sandusky County now has different professionals providing services to the child. Sandusky County through its failures purposefully destroyed the convenient forum of Arizona through delay. These actions in violation of the UCCJEA must not be rewarded.

CONCLUSION

This underlying matter and the way it has been handled by the Sandusky County Juvenile Court offends all common sense notions of fairness in its headlong rush to ignore the jurisdictional mandates of the UCCJEA as adopted by the State of Ohio.

The Sandusky County Juvenile Court has entertained an emergency exparte motion from a non-party paternal grandfather who didn't even bother to file a motion to intervene. Not only does the Sandusky County Juvenile Court have no problem awarding relief and custody to a non-party/non-parent; it also doesn't have any problem rewarding a paternal grandfather who has engaged in criminal custody interference and unjustifiable misconduct under the UCCJEA by continuing to exercise UCCJEA jurisdictions on behalf of the grandfather non-party despite a UCCJEA prohibition to decline jurisdiction. The Sandusky County Juvenile Court also has no problem in failing to hear and prosecute a inconvenient forum motion filed by the custodial mother since she and the minor child lived continuously in Arizona for over two years. Despite the fact that O.R.C. §3127.21(B) requires the Court to consider the factors and the motion, Sandusky County as declined to do so since the Motion was first filed in November of 2012.

The Sandusky County Juvenile Court has also failed to follow the dictates of O.R.C.§3127.18(D), which in conjunction with 3127.18(C) in this matter required the Sandusky County Juvenile Court to communicate with the Court in Arizona upon being informed on December 20, 2012 that the Mother has filed for custody enforcement and a "pick-up" order in Arizona on December 17, 2012. Despite the fact that this filing in Arizona took place prior to Sandusky County commencing a "probable cause" hearing, Sandusky County purposefully did not communicate with Arizona until late February or early March of 2013. By that time the Sandusky County Juvenile Court could claim that now there were new doctors in Ohio and so Arizona declined after this long delay due to inconvenient forum.

The facts of this case as alleged in the Complaint for Writ of Prohibition warrants the relief requested, which should be granted without remand. The UCCJEA sets forth requirements that must be complied with in order to exercise jurisdiction in accordance with its requirements.

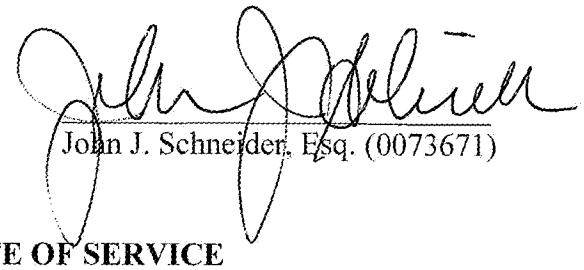
This matter is not as simple as saying the Juvenile Court has subject matter jurisdiction over custody matters. Herein that custody had previously been asserted and the Mother Appellant made the custodial parent. Herein the paternal grandfather after deceit and criminal interference with custody, nonetheless filed a non-party emergency exparte motion without timely notice to Mother who was known to be temporarily out of state, and received a temporary custody order despite not having filed a motion to intervene.

The Appellant Mother is presently "trapped" in Ohio because she chose to return temporarily to Ohio with her autistic child and now Sandusky County wants her to answer why her child is developmentally disabled. Appellant readily asserts that the Sandusky County Juvenile Court has failed to obey the UCCJEA's mandate to decline jurisdiction due to unjustifiable conduct; has failed to hold a hearing and decline jurisdiction due to forum non conveniens; and failed to promptly communicate with Arizona upon granting the specious ex-parte emergency motion by the non-party paternal grandfather for the purposes of defeating Arizona's rightful claim that on November 19, 2012 it was the proper forum for custody considerations due to the child and Mother having lived there for over two (2) years. This failure to obey the "shall immediately communicate" language of the UCCJEA should result in this Court ruling under the unique facts of this case that Sandusky County no longer properly continued to assert jurisdiction over this interstate custody matter after Mother's motion to dismiss was filed on November 30, 2012.

Appellant's Complaint for Writ of Prohibition should not have been dismissed and should be hereby granted for good cause shown without remand. This remedy is warranted since it is crystal clear that when the Sandusky County Juvenile Court entered its Probable Cause Order on January 30, 2013 it no longer had unambiguous jurisdiction to do so since the Sixth District had

entered an Alternative Writ on January 23, 2013 clearly divesting Sandusky County of jurisdiction.

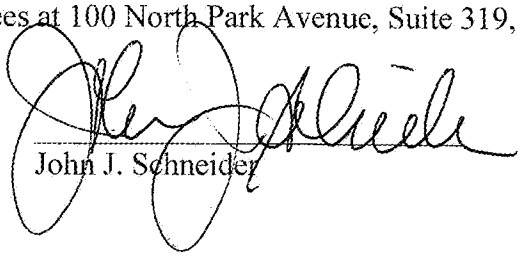
Respectfully submitted,



John J. Schneider, Esq. (0073671)

CERTIFICATE OF SERVICE

A true copy of the foregoing Appellant's Reply Brief will be sent by ordinary mail on the 29th day of July 2013 to Norman Solze, Esq., Assistant Prosecuting Attorney for Sandusky County, Ohio, and Counsel of Record for Appellees at 100 North Park Avenue, Suite 319, Fremont, Ohio 43420.



John J. Schneider

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

11/19/2008

CASE FILED
CONCERNING: JAIDYN BELTOWSKI

11/19/2008

INVOLVED PARTIES: PLAINTIFF: BEAMER, KYLE LEE 210 S MULBERRY STREET CLYDE,
DEFND 1: ROBERTSON, VICTORIA K 208 LIBERTY AVE CLYDE, OH 43410

11/19/2008

COMPL FOR ALLOC OF PARENT RIGHTS, FILED BY ATTY ICKES, COUNSEL FOR FATHER,
KYLE BEAMER;

11/19/2008

AFFIDAVIT FILED BY KYLE BEAMER;

11/19/2008

PRAECIPE TO SERVE VICTORIA VIA PERSONAL SERVICE, FILED BY ATTY ICKES;

11-19-2008

COMPLAINT COSTS $

11/24/2008

DEPOSIT - RECEIPT NO. 26676 IN THE AMOUNT OF $ 116.00 FROM GARY BEAMER

11/25/2008

DEPOSIT - RECEIPT NO. 26683 IN THE AMOUNT OF $ 47.00 FROM GARY BEAMER

11/25/2008

NOTICE OF HEARING ISSUED FOR: PRE TRIAL ON A COMPL FOR ALLOC OF PAR, VISITS
TAX EXEMP, CH SUPP, AND CHILD;S NAME CHANGE SET ON 1/12/09 AT 9 AM;

11/26/2008

DEPOSIT WAS PAID OUT AMOUNT $ -163.00

12/01/2008

REG MAIL RTD ON KYLE BEAMER AT 210 S MULBERRY ST, CLYDE, OH MARKED--
MOVED-FORWARD TIME EXPIRED; NEW ADDRESS IS: 3649 CO RD 175, CLYDE, OH 43430
RESENT MAIL TO NEW ADDRESS;

12/03/2008

PERSONAL SERVICE ON VICTORIA ROBERTSON SERVED BY SAND CO SHERIFF;

EXHIBIT
A
CLEVELAND, OHIO 44102-1799

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

12/03/2008

SHERIFF'S FEE - SAND CO SHERIFF FEES TO SERVE VICTORIA ROBERTSON

12/03/2008

PERSONAL SERVICE ON VICTORIA ROBERTSON SERVED BY SAND CO SHERIFF;

12/03/2008

SHERIFF'S FEE - SAND CO SHERIFF FEES TO SERVE VICTORIA ROBERTSON;

12-18-2008

SHERIFF'S FEE ADDED TWICE IN ERROR./MET

01/12/2009

MAGISTRATE'S ORDER: UON THE PRE-TRIAL HELD 01/12/09 ON A COMPL FOR ALLOC OF PAR RTS, TAX EXEMP,CH SUPP, VISITATION, AND CHILD'S NAME CHANGE, IT IS ORDERED THAT: THIS MATTER IS STAYED PENDING CONCLUSION OF MEDIATION;

01/12/2009

JE: IT IS ORDERED THAT THIS CASE IS REFERRED TO THE COURT MEDIATION PROGRAM FOR SAND CO WHO WILL CONTAXCT ALL PARTIES AND THEIR COUNSEL WITH DATES AND TIMES OF SESSIONS; FAILURE TO ATTEND A SCHEUDLED SESSION OR PARTICIPATE THEREIN IN GOOD FAITH MAY RESULT IN A CHARGE OF CONTEMPT OF COURT; ANY CANCELLATIONS OR CONTINUANCES MUST BE APPROVED BY THIS COURT;

01/14/2009

JE DATED 01/12/09 FILE STAMPED/JOURNALIZED/SENT REGULAR MAIL TO: KYLE BEAMER, VICTORIA ROBERTSON, ATTY ICKES;

01/29/2009

SUMMONS AND MEDIAITON JE SENT TO KYLE BEAMER;

01/29/2009

SUMMONS AND MEDIAITON JE SENT TO VICTORIA ROBERTSON;

02/02/2009

MEDIATION NOTICE: THE NEXT MEDIAITON SESSION IS 3/26/09 AT 9 AM IN THE SAND CO COURTHOUSE LAW LIBRARY;

02/18/2009

AMENDED COMPL FOR ALLOC OF PARENT RIGHTS FILED BY ATTY ICKES, COUNSEL FOR FATHER;

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

03/26/2009

MEDIATOR'S REPORT: A MEDIATION SESSION WAS HELD 3/26/09; A PARTIAL AGREEMENT WAS REACHED; A MEMORANDUM AGREEMENT WAS NOT SIGNED; ANOTHER MEDIAITN SESSION TO BE HELD IN 30 DAYS;

03/31/2009

MEDIATION NOTICE: A MEDIAITON SESSION IS SET ON 4/29/09 AT 1:30 PM IN THE SAND CO COURTHOUSE LAW LIBRARY;

05/01/2009

MEDIATOR'S REPORT; A MEDIATION SESSION WAS SCHEDULED FOR 4/29/09 BUTNEITHER PPARTY APPEARED; MEDIATION HAS BEEN COMPLETED; NO FURTHER SESSIONS WILL BE SCHEDULED;

05/08/2009

NOTICE OF HEARING ISSUED FOR: PRE TRIAL ON A COMPL FOR ALLOC OF PAR RTS, CH SUPP, VISITS, AND TAX EXEMPT SET ON 06/10/09 AT 10 AM; MEDIATION HAS BEEN COMPLETED;

06/12/2009

NOTICE OF HEARING ISSUED FOR: HRG ON A COMPL FOR ALLOC OF PAR RTS, VISITS, CH SUPP AND TAX EXEMPT SET ON 07/22/09 FROM 10 AM TO 12 NOON;

06/22/2009

MOTION TO WITHDRAW AMENDED COMPLAINT FILED 02/18/09 ANDPROCEED WITH A TRIAL ON ORIGINAL COMPLAINT FILED BY ATTY ICKES, COUNSEL FOR FATHER, KYLE BEAMER;

06/30/2009

JE: FOR GOOD CAUSE SHOWN, THE AMENDED COMPLAINT FILED 02/18/09 IS HEREBY WITHDRAWN AND THE CASE WILL BE SET ON THE ORIGINAL COMPLAINT;

06/30/2009

JE DATED FILE STAMPED/JOURNALIZED/SENT REGULAR MAIL TO: KYLE BEAMER, VICTORIA ROBERTSON, ATTY ICKES;

06/30/2009

NOTICE OF HEARING ISSUED FOR: HRG ON ORIGINAL COMPLAINT FOR ALLOC OF PAR RTS, VISITS, TAX EXEMPT, AND NAME CHANGE SET ON 07/22/09 AT 10 AM--VACATE THE AMENDED COMPLAINT FILED 02/18/09;

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

07/09/2009

ENTRY OF APPEARANCE FILED BY ALBRECHTA/COBLE LAW FIRM AS COUNSEL FOR MOTHER VICTORIA ROBERTSON;

07/09/2009

MOTION FOR HRG ON 07/22/09 TO BE CONTINUED AND CONCVERTED TO A PRE-TRIAL FILED BY ATTY ALBRECHTA, COUNSEL FOR VICTORIA;

07/09/2009

ANSWER AND COUNTER COMPLAINT FOR ALLOC OF PAR RTS AND MOTION FOR CH SUPPP FILED BY ATTY ALBRECHTA,C OUNSEL FOR VICTORIA;

07/09/2009

AFFIDAVIT FILED BY VICTORIA ROBERTSON;

07/17/2009

JE: CONTINUANCE GRANTED TO ATTY ALBRECHTA ON THE 07/22/09 HRG;

07/28/2009

NOTICE OF HEARING ISSUED FOR: PRE-TRIAL ON A COMPL FOR ALLOC OF PAR RTS, VIS, TAX, CH SUPP, AND COUNTER-CLAIM SET ON 10/05/09 AT 2 PM-RESET FROM 07/22/09 DUE TO A REQ CONT;

10/05/2009

CONSENT JE FOR TEMP ORDERS: UPON THE PRE-TRIAL HELD 10/05/09, IT IS ORDER-ED THAT; ON THE ALLOCATION OF PARENT RTS, THE PARTIES AGREE MOTHER, VICTORI ROBERTSON SHALL BE DESIGN LEG CUST AND RESID PAR OF THE MINOR CHILD, JADYN; FOR PARENTING TIME, THE PARTIES HAVE COMPLETED THE ORIENTATION AT VIL HOUSE FATHER, KYLE BEAMER, SHALL HAVE PAR TIME WITH MINOR CHILD AT A MINIMUM OF 1 TIME PER WKFOR 1 HOUR INTERVALS UNTIL FURTHER ORDER OF THE COURT;FOR

10/05/2009

....SUPP SEE PAGES 2,3,4,5 AND SUPPORT COMPUTATION;

10/13/2009

NOTICE OF HEARING ISSUED FOR: TRIAL ON A COMPL FOR ALLOC OF PAR RTS, VISITS CH SUPP, TAX EXEMPT, AND COURNTER CLAIM SET ON 12/07/09 FROM 10 AM TO 12 NOON;

11/06/2009

JE DATED 10/05/09 FILE STAMPED/JOURNALIZED/SENT REGULAR MAIL TO: KYLE BEAMER, VICTORIA ROBERTSN, ATTY ICKES, ATTY ALBRECHTA, CSEA;

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

12/07/2009

MAG DEC AND JE: UPON THE EVIDENTIARY HRG ON FATHER'S COMPL FOR ALLOC OF PAR RTS, PAR TIME FOR FATHER, CH SUPP, TAX EXEMPT, COUNTER-CLAIM FOR ALLOC OF PAR RTS, PAR TIME FOR FATHER, PARENTING EDUCATION FOR KYLE, HEALTH INSURANC COVERAGE, EQUITABLE DIVISION OF UNINSURED AND UNPAID HEALTH EXPENSES AND TAX EXEMPTY; IT IS ORDERED THAT VICTORIA BELTOWSKI (FKA ROBERTSON) IS DESIGNATED THE RESID PAR; FATHER SHALL HAVE SUPERVISED VISITS AT VILL HOUSE

12/07/2009

....UP TO ONE HOUR PER WEEK; KYLE SHALL NOT HAVE CONTACT WITH THE CHILD WHILE VISITING WITH PATERNAL GRANDMOTHER; KYLE SHALL ASSURE ALL CONTACT BETWEEN HIM AND THE CHILD WHILE THE CHILD IS VISITING WITH THE PATERNAL GRANDMOTHER SHALL BE DIRECTLY SUPERVISED BY THE GRANDMOTHER; KYLE SHALL SUCCESSFULLY COMPLE AN APPROVED PARENTING EDUCATION COURSE; CH SUPP OBLIGATION $299.26/MO OF KYLE SHALL CONTINUE UNTIL MODIFIED BY THE COURT

12/07/2009

....OR CSEA; THE DEPENDENT CH TAX EXEMPT, UNTIL FURTHER ORDER, SHALL BE AWARDED TO VICTORIA COMMENCING FOR THE CURRENT TAX YR; COSTS OF THIS PROCEE DDING TO BE PAID BY KYLE;

12/07/2009

NOTICE OF CHANGE OF NAME AND RELOCATION; VICTORIA ROBERTSON IS NOW VICTORIA BELTOWSKI AND ADDRESS OF 208 LIBERTY AVE, CLYDE, OH 43410M FILED BY ATTY ALBRECHTA;

12/09/2009

NOTICE OF FILING OF VILL HOUSE RPT FILED BY ATTY ALBRECHTA; (CONFIDENTIAL FILE)

12/16/2009

SEEK WORK ORDER FILED BY CSEA - SENT TO KYLE BEAMER THIS DATE BY REGULAR MAIL WITH A CERTIFICATE OF MAILING.

12-17-2009

CERTIFICATE OF MAILING RETURNED ON KYLE BEAMER.

03/15/2010

CONFIDENTIAL INFO ON KYLE BEAMER RC'D FROM LUTHERAN SOCIAL SERVICES;

06/08/2010

NOTICE OF RELOCATION OF VICTORIA BELTKOWSKI TO: 8604 E OLD SPANISH TRAIL, APT 33, TUCSON, AZ 85710 FILED BY ATTY ALBRECHTA, COUNSEL FOR VICTORIA;

Case No... 20840220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

11/29/2010

SHERIFF'S FEE WAIVED PER JUDGE

11/19/2012

CASE WAS REACTIVATED

11/19/2012

MOTION COSTS ASSESSED 116.00

11/19/2012

MOTION FOR CUSTODY EX PARTE FILED BY ATTY. FISER ON BEHALF OF GARY W. BEAMER, PAT. GRANDFATHER

11/19/2012

AFFIDAVIT OF GARY W BEAMER FILED BY GARY W. BEAMER, PAT. GRANDFATHER.

11/19/2012

AFFIDAVIT OF JODI BAGLEY FILED BY JODI BAGLEY, FRIEND OF PAT. GRANDFATHER

11/19/2012

AFFIDAVIT OF KYLE BEAMER FILED BY KYLE BEAMER, FATHER

11/19/2012

AFFIDAVIT OF JULIE GONZALEZ FILED BY JULIE GONZALEZ, PAT. GRANDMOTHER.

11/19/2012

UCCJEA AFFIDAVIT FILED BY GARY W. BEAMER, PAT. GRANDFATHER

11/19/2012

COMPLAINT FOR CUSTODY FILED BY ATTY. FISER

11/19/2012

PRAECIPE FILED BY ATTY. FISER

11/19/2012

JUDGMENT ENTRY: IT IS HEREBY ORDERED THAT THE COMPLAINTANT, PAT. GRANDFATHER GARY W. BEAMER IS HEREBY GRANTED IMMEDIATE TEMPORARY CUSTODY EX PARTE TO CONTINUE UNTIL A FULL AND FAIR HEARING MAY BE HELD ON THESE ISSUES.

Case No... 20640220
Concerning BEAMER, KYLE LEE VS BELTOWSKI, VICTORIA K

11/20/2012

PAYMENT - RECEIPT NO. 35032 IN THE AMOUNT OF $ 116.00
PAYOR MARY BETH FISER CO., LPA
ASSIGNED TO BEAMER, GARY W.

11/20/2012

PRO SE MOTION FILED BY VALERIE MILLER, MAT. GRANDMOTHER
(RETURN OF CHILD AND REVOKE TEMP. CUST)

11/20/2012

UCCJEA AFFIDAVIT FILED VALERIE MILLER, MAT. GRANDMOTHER

11/20/2012

NOTICE OF HEARING ISSUED FOR: PROBABLE CAUSE HEARING ON EMERGENCY TEMP.
CUSTODY GRANTED 11/19/12 SET FOR 11/30/12 AT 9:30AM

11/20/2012

REQUEST FOR SERVICE UPON KYLE BEAMER, FATHER VIA PERSONAL SERVICE

11/20/2012

REQUEST FOR SERVICE UPON VICTORIA BELTOWSKI, MOTHER VIA PERSONAL SERVICE

11/20/2012

REQUEST FOR SERVICE UPON VALERIE MILLER, MAT. GRANDMOTHER VIA PERSONAL
SVC. THROUGH CLK BY MAG. SHERICK'S REQUEST

11/20/2012

SUMMONS ISSUED UPON KYLE BEAMER, FATHER, VICTORIA BELTOWSKI AND VALERIE
MILLER VIA PERSONAL SERVICE

11/20/2012

COMPL/SUM/NOTICE WAS ISSUED BY PERSONAL SERVICE
TO: BEAMER, KYLE LEE
1600 COUNTY ROAD 243
FREMONT, OH 43420

11/20/2012

COMPL/SUM/NOTICE WAS ISSUED BY PERSONAL SERVICE
TO: BELTOWSKI, VICTORIA K
208 LIBERTY AVENUE
CLYDE, OH 43410
