

IN THE SUPREME COURT OF OHIO

MONTY R. WILLIAMSON,	:	CASE NO. 2017-0590
Appellant,	:	On Appeal from the Pickaway County Court of Appeals, Fourth Appellate District, Judgment filed March 21, 2017
vs.	:	
SCIOTO TOWNSHIP TRUSTEES, <i>et al.</i>:		Court of Appeals Case No.: 2016 CA 0005
Appellees.	:	

**APPELLEES' MOTION TO STRIKE PURSUANT TO
SUPREME COURT PRACTICE RULE 3.11(E)**

James R. Kingsley (0010720)
Kingsley Law Office
157 West Main Street
Circleville, Ohio 43113
Telephone: (740) 477-2546
Facsimile: (740) 477-2876
Email: kingsleyjrlaw@yahoo.com

*Counsel for Appellant,
Monty R. Williamson*

Kevin A. Lantz (0063822)
Surdyk, Dowd & Turner Co., LPA
8163 Old Yankee St., Suite C
Dayton, Ohio 45458
Telephone: (937) 222-2333
Facimile: (937) 222-1970
Email: klantz@sdtlawyers.com

*Counsel for Appellees,
Scioto Township Trustees,
Michael E. Struckman and Terry Brill*

MEMORANDUM

Appellant, Monty R. Williamson, filed the instant appeal from the Decision and Judgment Entry (“Judgment”) of the Court of Appeals of Pickaway County, Ohio, Fourth Appellate District, rendered on or about March 21, 2017. In that Judgment, the Court of Appeals held the Pickaway County Court of Common Pleas lacked subject matter jurisdiction over the case; should have granted Appellees’ Motion to Dismiss for want of jurisdiction; and, vacated the trial court’s judgment in favor of Appellees following a bench trial on the merits. Pursuant to Rule 3.11(E)(1) of the Supreme Court’s Rules of Practice, the Appellees, Scioto Township Trustees, Michael E. Struckman, and Terry Brill, respectfully request that the Court strike Appellant’s Notice of Appeal and accompanying Memorandum in Support of Jurisdiction, filed on or about May 2, 2017 because Appellant served neither document upon Appellees.

This Court’s Rules determine what constitutes proper service:

[W]hen a party * * * files any document with the Clerk of the Supreme Court, that party * * * shall also serve a copy of the document on all parties to the case. Service on a party represented by counsel shall be made on counsel of record.

* * *

Except as otherwise provided by this rule, service may be personal or by delivery service, mail, e-mail, or facsimile transmission. Except as provided in division (B) of this rule, personal service includes delivery of the copy to counsel or to a responsible person at the office of counsel and is effected upon delivery. Service by delivery service is effected by depositing the copy with the delivery service. Service by mail is effected by depositing the copy with the United States Postal Service for mailing. Service by e-mail is effected upon the successful electronic transmission of the copy. Service by facsimile transmission is effected upon the successful electronic transmission of the copy by facsimile process.

(S.Ct.Prac.R. 3.11(B)(1)(a), (C)(1)).

Appellees did not receive Appellant’s Notice of Appeal or Memorandum in Support of Jurisdiction by any method prescribed by Rule 3.11. Appellants did not serve Appellees by

personal or delivery service, mail, e-mail, or facsimile transmission; nor did Appellees receive notice through this Court’s portal. (Exhibit 1, Aff. of Stephanie Arrowood, ¶¶ 1-4; Exhibit 2, Aff. of Diane Harding, ¶¶ 1-6; Exhibit 3, Aff. of Kevin A. Lantz, Esq., ¶¶ 1-6) Instead, Appellees’ counsel learned of Appellant’s appeal by a random check of the Court’s online docket. (Exh. 3, Lantz Aff., ¶ 7)¹

The Rules of Practice dictate the consequences for a party’s failure to serve documents on other parties:

- (1) When a party * * * fails to serve a party * * * to the case in accordance with division (B) of this rule, any party adversely affected may file a motion to strike the document that was not served. Within ten days after a motion to strike is filed, the party or amicus curiae against whom the motion is filed may file a memorandum in response.
- (2) If the Supreme Court determines that service was not made as required by this rule, it may strike the document or, if the interests of justice warrant, order that the document be served and impose a new deadline for filing any responsive document. If the Supreme Court determines that service was made as required by this rule or that service was not made but the movant was not adversely affected, it may deny the motion to strike.

(S.Ct.Prac.R. 3.11(E)).

The Appellant’s failure to serve Appellees with his Notice of Appeal and Memorandum in Support of Jurisdiction unquestionably has adversely affected Appellees. Appellees’ response to Appellant’s jurisdictional memorandum is due to be filed “within thirty days after the appellant’s memorandum in support of jurisdiction is filed * * *” (S.Ct.Prac.R. 7.03(A)(1)). Without perfection of service, Appellees are deprived of the full thirty-day period (minus the time required for an approved method of service) to respond to Appellant’s Memorandum in Support of Jurisdiction. Furthermore, Appellees’ response is not eligible for a stipulated

¹ It is noteworthy that Appellant does not subscribe a date of service in the Certificate of Service on the online copy of his Notice of Appeal. (S.Ct.Prac.R. 3.11(D)(1)(a) (“The certificate of service shall state the date and manner of service and identify the names of the persons served and shall be signed by the party * * * who files the document.”))

extension of time. (S.Ct.Prac.R. 3.03(B)(2)).

Therefore, for the reasons stated herein, the Appellees respectfully request that the Court strike Appellant's Notice of Appeal and accompanying Memorandum in Support of Jurisdiction pursuant to Rule of Practice 3.11(E), because Appellant did not serve Appellees as required by Rule.

Respectfully submitted,

/s/Kevin A. Lantz

Kevin A. Lantz (0063822)
SURDYK, DOWD & TURNER CO., L.P.A.
8163 Old Yankee Street
Suite C
Dayton, Ohio 45458
Telephone: (937) 222-2333
Facsimile: (937) 222-1970
klantz@sdtlawyers.com

*Counsel for Appellees, Scioto Township Trustees,
Michael E. Struckman and Terry Brill*

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2017, I served a copy of the foregoing by first-class U.S. Mail, postage prepaid, to the following:

James R. Kingsley, Esq.
KINGSLEY LAW OFFICE
157 West Main Street
Circleville, Ohio 43113
Attorney for Appellant/Cross-Appellee

/s/Kevin A. Lantz

Kevin A. Lantz

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Appellant, : On Appeal from the Pickaway County

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SCIOTO TOWNSHIP TRUSTEES, *et al.*, : District, Judgment filed March 21, 2017

Appellees. : Court of Appeals Case No.: 2016 CA 0005

AFFIDAVIT OF STEPHANIE V. ARROWOOD

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

Now comes Stephanie V. Arrowood, being first duly cautioned and sworn, and deposes and states the following:

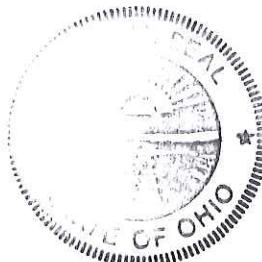
1. I am over eighteen (18) years of age and have personal knowledge of the matters testified to herein.
2. I am a legal assistant to attorney, Kevin A. Lantz, Esq.
3. My duties and responsibilities as a legal assistant include, but are not limited to, accepting personal and/or delivery service of documents for Mr. Lantz, opening mail addressed to Mr. Lantz, reviewing e-mails pertinent to Mr. Lantz's cases and forwarding those e-mails to him, and delivering facsimile transmissions addressed to Mr. Lantz or that concern his cases.
4. I have not received service copies of Appellant's Notice of Appeal and/or Appellant's Memorandum in Support of Jurisdiction by personal service, delivery service, mail, e-mail, facsimile transmission or by any other means.



FURTHER AFFIANT SAYETH NAUGHT

Stephanie V. Arrowood
Stephanie V. Arrowood

Sworn to before me and subscribed in my presence by the said Stephanie V. Arrowood
this 16th day of May 2017.



KEVIN A. LANTZ, Attorney at Law
Notary Public, State of Ohio
My Commission Expires No Expiration Date
Section 147.03 O.R.C.

Kevin A. Lantz
Notary Public

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Appellees. :

AFFIDAVIT OF DIANE M. HARTING

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

EXHIBIT

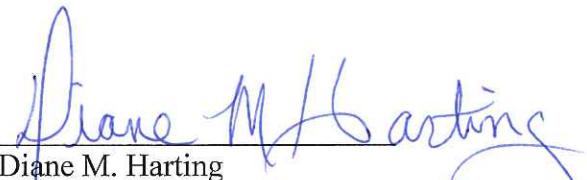
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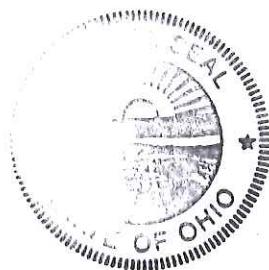
Now comes Diane M. Harting, being first duly cautioned and sworn, and deposes and states the following:

1. I am over eighteen (18) years of age and have personal knowledge of the matters testified to herein.
2. I am a legal assistant to attorney, Kevin A. Lantz, Esq.
3. My duties and responsibilities as a legal assistant include, but are not limited to, accepting personal and/or delivery service of documents for Mr. Lantz, opening mail addressed to Mr. Lantz, reviewing e-mails pertinent to Mr. Lantz's cases and forwarding those e-mails to him, and delivering facsimile transmissions addressed to Mr. Lantz or that concern his cases.
4. In addition, if I receive e-mail notifications from this Court, through its e-mail notification system, attorney portal or other means that pertain to Mr. Lantz's cases, I forward those emails to Mr. Lantz.
5. I have not received service copies of Appellant's Notice of Appeal and/or Appellant's Memorandum in Support of Jurisdiction by personal service, delivery service, mail, e-mail, facsimile transmission or by any other means.
6. In addition, I have not received any notification from this Court, through its e-mail notification system, attorney portal or other means, that Appellant has filed the instant appeal.

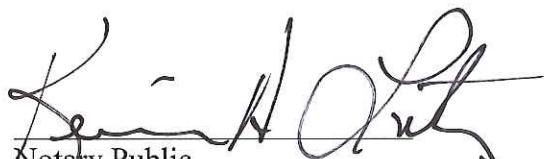
FURTHER AFFIANT SAYETH NAUGHT


Diane M. Harting

Sworn to before me and subscribed in my presence by the said Diane M. Harting this 16th day of May 2017.



KEVIN A. LAMITZ, Attorney at Law
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 O.R.C.


Notary Public

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AFFIDAVIT OF KEVIN A. LANTZ, ESQ.

STATE OF OHIO)
) ss:
COUNTY OF MONTGOMERY)

EXHIBIT

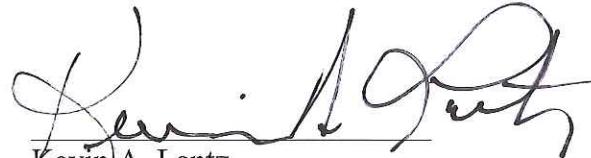
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Now comes Kevin A. Lantz, Esq., being first duly cautioned and sworn, and deposes and states the following:

1. I am over eighteen (18) years of age and have personal knowledge of the matters testified to herein.
2. I am an attorney licensed to practice in good standing in the State of Ohio. My Supreme Court Attorney Registration Number is 0063822.
3. I am counsel for the Appellees in the above-captioned case.
4. I have not received service copies of Appellant's Notice of Appeal and/or Appellant's Memorandum in Support of Jurisdiction by personal service, delivery service, mail, e-mail, facsimile transmission or by any other means.
5. In addition, I have not received any notification from this Court, through its e-mail notification system, attorney portal or other means, that Appellant has filed the instant appeal.
6. When my legal assistant, Diane M. Harting, receives an e-mail notification from this Court concerning any case activity, she forwards the notification to me by e-mail. I have not received any such e-mail from Ms. Harding concerning the instant appeal.
7. I first discovered that Appellant had filed the instant appeal through a random check of this Court's online docket.

FURTHER AFFIANT SAYETH NAUGHT



Kevin A. Lantz

Sworn to before me and subscribed in my presence by the said Kevin A. Lantz this 16th day of May 2017.



Diane M. Harting
Notary Public

Diane M. Harting, Notary Public
In and for the State of Ohio
My Commission Expires: July 27, 2020