**IN THE SUPREME COURT OF OHIO**

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| **M. ANGELA LELAK (nka SIDDALL)** | : | **Case No. 2022-1421** |
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| **Plaintiff-Appellee,** | : | **On Appeal from the Montgomery** |
| | : | **County Court of Appeals, Second** |
| **v.** | : | **Appellate District** |
| | : | |
| **JOHN W. LELAK, JR.** | : | **Court of Appeals No. CA028243** |
| | : | |
| **Defendant-Appellant.** | : | **Trial Court Case No. 1982-DR-1530** |
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**MEMORANDUM IN OPPOSITION TO JURISDICTION OF APPELLEE M. ANGELA LELAK (nka SIDDALL)**

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## EXPLANATION AS TO WHY THIS IS NOT A CASE OF GREAT GENERAL INTEREST

In this case, Appellant John W. Lelak, Jr. ("Lelak") asks this Court to exercise discretionary review of a unique, "one-off" set of facts resulting in a contempt finding requiring Lelak to pay to his ex-wife, Appellee M. Angela Siddall ("Siddall"), the amounts due from a 1983 property settlement, plus the attorney's fees required to litigate the issue. This Court should decline the invitation. There is little to no chance for the facts and issues that occurred here to reoccur, and none of Lelak's Propositions of Law present issues of interest to any other parties, much less great general interest, meriting this Court's review.

Lelak and Siddall were divorced in 1983. As part of the divorce, they agreed to split Lelak's retirement account, with Lelak responsible for paying Siddall $10,363.00. Because no Qualified Domestic Relations Order ("QDRO") to split a retirement account existed at the time, Lelak was required to pay from his personal property $50 per week until the split was satisfied. Lelak was also required to give Siddall ten days' notice upon disposition of funds from the retirement account if the full amount had not been paid. Lelak ended up discharging the weekly payment in bankruptcy, but the bankruptcy court was clear to specify that the state court's property-division judgment remained undisturbed.

Lelak ultimately liquidated the retirement account in 1998, but he did not notify or pay Siddall, who did not discover the disposition of funds until 2016. Then she filed a motion for contempt that resulted in three separate and successful appeals. *Lelak v. Lelak*, 2d Dist. Montgomery No. 28243, 2019-Ohio-4807 (the "2019 Opinion"); *Lelak v. Lelak*, 2d Dist. Montgomery No. 28872, 2021-Ohio-519 (the "2021 Opinion"); *Lelak v. Lelak*, 2d Dist. Montgomery Nos. 29308, 29321, 2022-Ohio-3458 (the "2022 Opinion").

Although the trial court magistrate granted the original motion for contempt, and awarded Siddall $90,053.64 plus attorney's fees, the trial court reversed the decision, finding that the bankruptcy discharged the indebtedness in its entirety. The 2019 Opinion reversed, finding that the debt was not discharged in the bankruptcy, but that other factual issues needed to be resolved at the trial court level before a judgment could issue. 2019 Opinion, ¶ 24.

On remand again, the trial court denied the motion for contempt, holding that the notice requirement was not violated under the doctrines of laches and impossibility.

The 2021 Opinion ultimately ordered that Lelak was in contempt of the 1983 divorce decree for failing to pay the amounts required, and issued a remand order that Siddall was entitled to the $10,363 plus interest from the date when a withdrawal from the retirement account could have been taken without penalty.

On remand, the trial court ultimately issued an order finding Lelak in contempt and requiring him to pay the $10,363 accruing at an 11% rate of simple interest from 1989. It also awarded $2,000 in attorney's fees. Both parties appealed.

In the 2022 Opinion, the Second District held that the judgment was to be based on the statutory rate of interest for each of the applicable years, not the single rate since 1989. The Second District panel also concluded that Lelak was responsible for all of Siddall's attorney's fees and expert costs due to his actions in protracting the litigation.

Lelak now appeals to this Court from the 2022 Opinion, raising four propositions of law. The first proposition of law addresses the bankruptcy court's order of discharge, but ignores: (1) the bankruptcy court itself said the property settlement was not dischargeable; (2) the Second District ruled in the unappealed 2019 Opinion that the bankruptcy discharge did not affect the obligation to pay $10,363.00; (3) the Second District ruled that Lelak was responsible for the

amounts due in the 2021 Opinion, which was also not appealed; and (4) this is not an issue that is remotely likely to recur for anyone else. Lelak's second and third propositions of law raise issues involving the defenses to contempt, but again, those were addressed in the unappealed 2021 Opinion. Lastly, he addresses the order of attorney's fees, but cites no law to support any challenge to the rationale behind the award; that there was any issue, and even if there was, it would only be applicable to these parties. Because there are no questions of great general interest, jurisdiction should be declined.

## STATEMENT OF THE CASE AND FACTS

A. The Divorce and Order At Issue

Lelak and Siddall divorced in 1983 after fifteen years of marriage. The Final Decree and Judgment of Divorce ("Final Decree," dated January 31, 1983) created three requirements for Lelak's retirement benefits:

1. Siddall was entitled to receive from Lelak $10,363.00;
2. Lelak was to pay $50.00 the amount due in the sum of $50 per week after the sale of the marital house until the amount has been paid in full; and
3. Lelak could not withdraw any money from the retirement accounts without ten days' notice to Siddall.

2019 Opinion, ¶ 2.

The Final Decree was amended on February 3, 1983, to state: "It is further ordered that [Lelak] is not allowed to withdraw any retirement benefits from either account without ten days written notice to [Siddall] at any time prior to the full payment due to the [Siddall]." *Id.*, ¶ 3.

B. Lelak Declares Bankruptcy

Four months later, in June 1983, Lelak filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code. *In re Lelak*, 38 B.R. 164 (Bankr.S.D.Ohio 1984). Lelak named Siddall

as an unsecured creditor for non-alimony obligations including the retirement amount and other issues. Siddall filed a complaint in the bankruptcy for a determination of the dischargeability of the retirement split.

The bankruptcy court found that the weekly payments were dischargeable in bankruptcy. *In re Lelak*, 38 B.R. at 169. However, as to the *overall* debt of $10,363.00, the bankruptcy court held:

> Finding that the weekly advance payments applying to the retirement benefits do not constitute alimony and support, however, should not be construed as interference with the state court Decree as to the division of the marital property *in esse*. For that reason, this court has specifically iterated and emphasized above the state court prohibition, "that [Lelak] is not allowed to withdraw any retirement benefits from either account without ten days written notice to [Siddall]." The extent to which such funds are vested and the extent to which they may be so encumbered under the Ohio law **is not now an issue sub judice, and is a question of state law properly to be determined by the state court**. In any event, the judgment by this court should not be deemed any alteration of or interference in the implementation of the division of the retirement benefits property as vested on the date of the state court Decree, when payable.

*Id.* at 169.

In short, the bankruptcy court discharged the weekly payments, but expressly held that it was not addressing Lelak's obligation to pay Siddall $10,323 from the Final Decree. The bankruptcy court properly left that issue for the state court to resolve, which it did via contempt.

C. The Original Contempt Hearing

Lelak withdrew the pretax sum of $181,035.44 in 1998 from his retirement account, and never provided notice to Siddall. Siddall discovered this in 2016, and filed a motion to show cause seeking a contempt finding. The motion also sought an order requiring Lelak to pay the monies owed as well as any growth arising from the funds (assuming Siddall had been able to invest them), attorney's fees, and costs.

Three hearings were conducted, including presentations by bankruptcy law experts, as well as financial experts regarding the present-day value of Siddall's share of the retirement account. The magistrate found Lelak in contempt for failing to provide the 10-day notice and failing to pay Siddall her share of the benefits. The magistrate awarded Siddall $90,053.64 as her portion and $14,652 in attorney's fees.

The trial court declined to adopt the magistrate's decision, holding that because the Final Decree provided no other method for payment than the $50.00 per week payments, the discharge of that obligation discharged the entire debt.

D. The 2019 Opinion

Siddall appealed, arguing that the trial court abused its discretion in overruling each of the magistrate's findings. The Second District agreed.

The 2019 Opinion detailed that the "trial court erred in finding that the bankruptcy court discharged Siddall's interest in the retirement account. The [Final Decree] granted Siddall a property interest in the retirement account and the bankruptcy court's decision did not divest her of her judicially-declared ownership interest." 2019 Opinion, ¶ 22. The Second District held that "a reversal and remand is required," but the issue of "whether Lelak should be found in contempt is a matter for the trial court to address in light of our decision." *Id.*, ¶ 24.

No appeal from the 2019 Opinion was taken by Lelak.

E. The Trial Court Denies the Contempt Motion on Remand

After the 2019 Opinion, the trial court again denied the Contempt Motion. It found that Lelak's failure to provide Siddall with the ten-day notice was not conducive to remedial punishment and that Siddall had failed to provide evidence that Lelak had specific intent to disobey the decree. The trial court also concluded that even if Lelak's action constituted civil

contempt, the evidence established the defense of impossibility because Lelak had not known Siddall's new marital name or her address and therefore could not have provided her notice.

Lastly, the trial court held that it could not order Lelak to pay the amount owed because it would constitute an impermissible modification of the Final Decree, and in any event, laches barred crafting such a modification. Siddall appealed. Again, the Second District agreed with Siddall.

F. The 2021 Opinion

1. *Contempt is ordered.*

The Second District held that the trial court's analysis of criminal contempt was not appropriate in the context of evaluating compliance with a divorce decree. 2021 Opinion, ¶ 19. Instead, a "prima facie case of civil contempt is made when the moving party proves both the existence of a court order and the nonmoving party's noncompliance with the terms of that order." *Id.*, ¶ 20; quoting *Jenkins v. Jenkins*, 2012-Ohio-4182, 975 N.E.2d 1060, ¶ 12 (2d Dist.), quoting *Wolf v. Wolf*, 1st Dist. Hamilton No. C-090587, 2010-Ohio-2762, ¶ 4.

The Second District acknowledged that the "unrebutted evidence" demonstrated a court order that Lelak admittedly non-complied with. Opinion, ¶ 22. Lelak's failure to comply based on his belief that the bankruptcy court order had discharged his indebtedness was irrelevant. *Id.*, ¶ 23.

The Second District further noted that Lelak's claim that the bankruptcy court discharged his duty was not supported by his interrogatory responses, at which Lelak acknowledged he was supposed to pay Siddall $10,363 at the age of mandatory withdrawal. *Id.*, ¶ 24.

As to Lelak's impossibility defense, the Second District held that the evidence presented regarding Lelak's alleged inability to locate Siddall was all dated more than eight years before the actual withdrawal of the pension funds, and that there was no evidence of any further

attempts by Lelak to locate Siddall. *Id.*, ¶ 26. Moreover, Lelak and Siddall shared adult daughters, and he never testified he was not in contact with them at the time of the withdrawal, nor did he explain how he could not have provided the notice through the trial court itself. *Id.* The Second District held "in short, the unrebutted evidence showed no attempt to notify Siddall of the withdrawal." *Id.*

Lastly, the Second District held that laches could not apply, because for it to forbid enforcement of a right, "it must be shown that the person for whose benefit the doctrine will operate has been materially prejudiced by the delay of the person asserting [the] claim." *Id.*, ¶ 33; citing *Smith v. Smith*, 168 Ohio St. 447, 156 N.E.2d 113 (1959), paragraph three of the syllabus. Expressly, the Second District stated "Lelak's inconvenience at having to satisfy his court-ordered obligation at this admittedly late date cannot be considered materially prejudicial." 2021 Opinion, ¶ 33.

As a result of the above, the Second District concluded that "the trial court erred and abused its discretion by not finding Lelak in civil contempt for his failure to provide Siddall with notice of his withdrawal of the pension funds." *Id.*, ¶ 27.

2. *The method of calculating the amount due is set.*

Before the trial court and the Second District, Siddall contended she was entitled to the value of the original order ($10,363) as if it had been conservatively invested when the funds were supposed to have been given to her. She presented expert evidence that this would have totaled $90,000.00 by the time of her contempt motion. The Second District rejected this, concluding that Siddall was entitled to growth in the amount of statutory interest from the date that Lelak could have withdrawn the retirement funds without penalty. *Id.*, ¶¶ 37-39. Because the date of penalty-free withdrawal could not be determined from the record, the matter was remanded for further factual development. *Id.*, ¶ 39.

3. *Attorney's fees are appropriate.*

Because of the trial court's findings that Lelak was not in contempt, it did not address the request for attorney's fees. The Second District concluded that the trial court erred in failing to consider the request. *Id.*, ¶ 43.

Again, Lelak did not appeal from the 2021 Opinion, despite the Second District's determinations that: (1) Lelak was to be ordered to be in civil contempt; and (2) that Siddall was entitled to $10,363 plus statutory interest from the date the retirement funds could have been withdrawn without interest.

G. The Trial Court's Third Order

Pursuant to the 2021 Opinion, the trial court held another factual hearing on July 29, 2021. The parties stipulated that August 31, 1989 was the first date that money could have been withdrawn from the retirement account.

The trial court also took evidence regarding Siddall's experts, fees, and costs. The parties stipulated that the expert fees were $3,625 for the bankruptcy expert and $3,000 for the expert who calculated the interest rates. And Siddall presented testimony that she incurred $41,436.50 in attorney's fees from February 2016 through June 23, 2021, and an additional $4,499 through July 29, 2021.

The trial court awarded Siddall $10,313 at 11% interest from 1989 until the judgment is paid, using a simple interest accrual. It also awarded only $2,000 in attorney's fees, expressly finding that the majority of the fees were not directly related to the contempt and that Lelak had not engaged in conduct undermining the discovery process or protracting the litigation. It also sentenced Lelak to three days in jail, suspended, conditioned on paying the amounts due plus interest within 60 days.

Both sides appealed.

H. The 2022 Opinion

Siddall appealed raising two issues: that the trial court should have awarded compound interest instead of simple interest and that she was entitled to her full attorney's fees. The Second District affirmed the trial court's determination that simple interest was appropriate. 2022 Opinion, ¶ 48.

1. *Attorney's fees and litigation costs were required.*

The Second District found that the trial court's decision regarding attorney's fees was based on unsound reasoning. *Id.*, ¶ 54. Specifically, pursuant to R.C. 3105.73(B), a court "may award all or part of reasonable attorney's fees and litigation expenses to either party" relating to any "post-decree motion or proceeding." The award must be "equitable," and as part of that determination "the court may determine the parties' income, the conduct of the parties, and any other relevant factors the court deems appropriate, but it may not consider the parties assets." 2022 Opinion, ¶ 54; quoting R.C. 3105.73(B).

Awards under R.C. 3105.73 are not limited to attorney's fees, they include litigation expenses and expert fees. 2022 Opinion, ¶ 55; citing *Buckingham v. Buckingham*, 2018-Ohio-2039, 113 N.E.3d 1061, ¶ 82 (2d Dist.).

The Second District held that the trial court improperly restricted itself to the determination of fees relating to the 10-day notice period for two reasons. First, Siddall sought in the Contempt Motion an order requiring payment of the amounts due under the Final Decree. 2022 Opinion, ¶ 56. Second, Lelak never contested the compliance with the 10-day notice period other than whether it was excused under the bankruptcy discharge, an issue which was heavily litigated. *Id.*, ¶ 57.

The Second District went on to hold that Lelak's conduct *did* warrant a substantial fee award to Siddall for several important reasons:

- Lelak answered an interrogatory indicating he understood the bankruptcy order to require payment to Siddall at the age of mandatory withdrawal, yet it was undisputed he had not complied (*Id.*, ¶ 60);
- Lelak was aware of Siddall's address from 1990 from a court proceeding and she still resided there through the contempt proceeding in 2016 (*Id.*, ¶ 61);
- Lelak complicated the litigation by filing a show-cause motion for Siddall missing a hearing at which the parties had already filed an agreed order indicating they were all in attendance and had been continued to a later date. Lelak required a full hearing on the motion even after being presented with the documented evidence (*Id.*, ¶ 62);
- Siddall was required to file multiple motions to obtain records from Lelak regarding his retirement accounts (*Id.*, ¶ 64);
- Lelak objected to the use of documents at the evidentiary hearing that he himself had produced (*Id.*, ¶ 65);
- Lelak's counsel declined the use of continuing objections at the evidentiary hearing contrary to law from the Second District (*Id.*, ¶¶ 67-68); and
- Lelak's initial brief in the appeal after the third trial court order "included an assignment of error that attempted to relitigate the trial court's contempt filing" which had "no merit" because of the Second District's prior holding in the 2021 Opinion requiring a finding of contempt (*Id.*, ¶¶ 81-82)

Ultimately the Second District concluded that "Lelak did not cooperate in discovery, attempted to hinder admission of materials without a reasonable basis, and prolonged the litigation and caused additional attorney fees by filing motions that had little or no merit." *Id.*, ¶ 80.

The Second District noted that "contrary to the trial court's finding, the legal issues here, in fact, were complex and difficult." *Id.*, ¶ 83. This required expert testimony from attorneys who practice in bankruptcy court, whether the growth value of the pension should be included, the proper method of calculating it, and the statutory interest rate to be used. *Id.*, ¶¶ 83-84. The court concluded that the trial court erred in considering that the matter had not required significant time, labor, and professional skills. *Id.*, ¶ 85.

To the extent the trial court did not address the parties' income, the Second District noted that Lelak did not attempt to introduce any evidence on the issue. *Id.*, ¶ 86.

The Second District ultimately concluded that based on the "prior conclusions, the evidence presented, and the lack of evidence or dispute presented by Lelak as to the amounts or reasonableness of the fees" that Siddall was entitled to:

- $41,436.50 for attorney fees through June 23, 2021;
- $4,499.50 for fees through the final hearing on July 29, 2021;
- $6,625.00 of expert fees; and
- $562.00 in court costs

For a total of $53,123 for which the trial court was instructed to enter judgment on Siddall's behalf. *Id.*, ¶ 108.

2. *The trial court incorrectly calculated the interest rate for the judgment.*

Ultimately, the Second District did sustain Lelak's assignment of error that the wrong interest rate was used. *Id.*, ¶ 128. The matter was remanded to the trial court with instructions that the R.C. 1343.03 statutory interest rate of 10% for judgments should be used from August 31, 1989 through June 2, 2004 (when R.C. 1343.03 was amended). At each year thereafter, R.C.

1343.03 provided for a variable rate for each year. The interest rate should be adjusted based on the statutory judgment rate certified each year. *Id.*, ¶ 125.

In all other aspects, the trial court's determination was affirmed. This appeal resulted.

## RESPONSE TO APPELLANT'S PROPOSITIONS OF LAW

**Proposition of Law No. I:** State courts must not undermine or disregard a dischargeability order of the United States Bankruptcy Court.

The Court should decline jurisdiction over this proposition of law for three reasons. First, like most of Lelak's other propositions of law, the issue is waived and barred by *res judicata* or the law-of-the-case doctrine because it was determined in the 2021 Opinion and not appealed. Second, this proposition of law ignores the plain language of the bankruptcy order in this case. Lastly, this is plainly not a question of great general interest, as the issue only applies to these parties.

### A. The 2021 Opinion must have been appealed to preserve this issue.

As an initial matter, the issue of whether the 1983 Final Decree obligation was discharged was fully addressed in the Second District's 2019 Opinion *and* the 2021 Opinion. Lelak's failure to appeal it then results in its waiver.

The law-of-the-case doctrine provides that legal questions resolved by a reviewing court in a prior appeal remain the law of that case for any subsequent proceedings at both the trial and appellate levels. *Giancola v. Azem*, 153 Ohio St.3d 594, 2018-Ohio-1694, 109 N.E.3d 1194, ¶ 1; citing *Nolan v. Nolan*, 11 Ohio St.3d 1, 3, 11 Ohio B. 1, 462 N.E.2d 410 (1984). Lelak's failure to appeal either the 2019 or the 2021 Opinion renders the holdings in the 2021 Opinion – that Lelak was in contempt and was required to pay the amounts due – the law-of-the case for *all subsequent proceedings*. That is dispositive of the first proposition of law as of a matter of law, and there is no basis for this Court to address that proposition.

Lelak makes a short attempt in the conclusion in the Memorandum in Support of Jurisdiction that he could not have appealed the 2021 Opinion until a final order was issued by the trial court. Memorandum, 12; citing *VIL Laser Sys., L.L.C. v. Shiloh Industries, Inc*., 119 Ohio St.3d 354, 2008-Ohio-3920, 894 N.E.2d 303 and *Walburn v. Dunlap*, 121 Ohio St.3d 373, 2009-Ohio-1221, 904 N.E.2d 863.

Neither is on point. *VIL Laser Sys.* addresses whether an order offering a new trial or remittitur was a final appealable order. 119 Ohio St.3d 354 at ¶ 12. *Walburn* only only addresses whether a partial summary judgment decision is a final appealable order when Civ.R. 54(B) language is included. 121 Ohio St.3d 373 at ¶ 1. Neither addresses whether an appellate decision is appealable to *this Court*.

Any decision of a court of appeals is appealable to this Court under S.Ct.Prac.R. 5.02 if it involves a substantial constitutional question, a felony, or a question of public or great general interest. Lelak failed to timely appeal the dischargeability issue. Even if accepted, this proposition of law would not result in the reversal of the 2022 Opinion.

B. Lelak ignores the language of the bankruptcy order.

Even if Lelak had perfected an appeal of the 2021 Opinion for this review, he fails to acknowledge that the bankruptcy court specifically held it was not disturbing the state court's property distribution in total, just the monthly obligation. Again, the bankruptcy court held "the judgment by this court should not be deemed any alteration of or interference in the implementation of the division of the retirement benefits property as vested on the date of the state court Decree, when payable." 38 B.R. at 169.

The dischargeability issue fails before it begins. Jurisdiction should be declined.

C. This is not a question of great general interest.

Lelak has not demonstrated that any of the issues presented relating to dischargeability are applicable to anyone other than himself. As this court does not accept discretionary appeals for purposes of error correction, there is no question of great general interest and jurisdiction should be declined.

> **Proposition of Law No. II:** State courts must not undermine the legislature and adhere to Ohio Revised Code Section 3105.171(I) wherein once a division or disbursement of property or distributive award is made under this section it is not subject to future modification by the court except upon the express written consent or agreement to the modification by both spouses.
>
> **Proposition of Law No. III:** There can be no finding of civil contempt when it is impossible for a party to follow the alleged order and pursuant to the doctrine of laches.

Propositions of Law Nos. II and III suffer from the same fatal defects. Neither proposition of law was litigated in the trial court regarding the last contempt order; neither was addressed in that order; neither was addressed in the briefing of the appeal resulting the 2022 Opinion, and no holding or analysis relevant to these propositions appear in the 2022 Opinion. Both issues *were* litigated in the appeal resulting in the 2021 Opinion, but that decision was not appealed. The arguments were waived. Even if the propositions were accepted and adopted, they would not result in changing the underlying outcome. Jurisdiction should be declined.

> **Proposition of Law No. IV:** A court is prohibited from issuing an order for attorney fees and litigation expenses, pursuant to Ohio Revised Code Section 3105.73(B) when the record is devoid of relevant factors required by the statute.

Lelak cites no law in support of this proposition of law and merely argues that he was defending the motion, not prolonging or protracting the litigation. The lack of specificity as to a legal conflict demonstrates there is no question of great general interest on this issue. Moreover, R.C. 3105.73(B) clearly permits an award of fees in any post-decree proceeding and only lists

the factors the trial court "may" consider. At best, Lelak is seeking error correction, not a general statement of the law in the State of Ohio. Jurisdiction should be declined.

## CONCLUSION

This case does not present any question of great general or public interest. Lelak could have appealed the issues raised in the first three propositions in an appeal from the 2021 Opinion, but he did not, and therefore, they are waived. The issues in Lelak's first proposition are contrary to the language of the bankruptcy decision he claims results in discharge, and in any event, are only of interest to these specific parties. The fourth proposition of law is the only one properly (that is, procedurally) appealable to this Court, but Lelak fails to cite any dispute creating a question of great general interest, as opposed to himself and Siddall. Jurisdiction should be declined.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of December 2022, I filed the above with the Clerk of Courts and a true and correct copy of the same was served via electronic mail upon the below listed counsel:

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