

IN THE SUPREME COURT OF OHIO

JOAN CAROL LIPIN,

*

On Appeal from the Preble
County Court of Appeals,
Twelfth Appellate District

Plaintiff-Appellant

v.

CASE NO.: CA2022-12-022

ARTHUR DODSON WISEHART, individually, *
and a/k/a ARTHUR DODSON WISEHART or
ARTHUR D. WISEHART co-trustee of the
Dorothy R. Wisheart trust, and QUENTIN
BOWMAN, individually and a/k/a QUENTIN L.
BOWMAN OR QUENTIN K. BOWMAN, and
QK FARMS, LLC, and JANE ELLEN BEACH,
ESQ., individually,

(Civil Other-Declaratory Judgment Action)

23-0079

Defendants-Appellees.

*

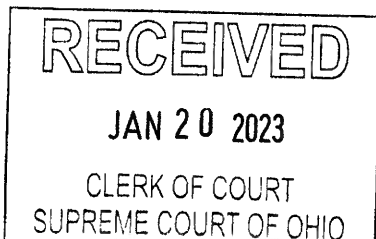
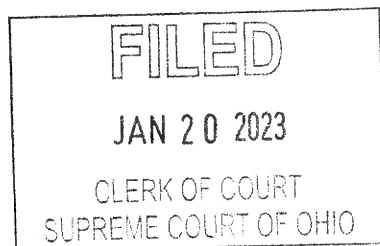
NOTICE OF APPEAL AND JURISDICTIONAL STATEMENT

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for Defendant-Appellee Jane Ellen Beach, Esq.,
individually




Joan Carol Lipin ("Plaintiff-Appellant") hereby gives notice of her appeal to the Supreme Court of Ohio from the entry filed in the Court of Appeals, Twelfth Appellate District, Preble County, that (1) denied appellant's application for reconsideration and motion to certify the record on January 18, 2023, and stated, in part, as follows:

The above cause is before the court pursuant to a motion for reconsideration and motion to certify the record filed by appellant, Joan Carol Lipin, on December 21, 2022; a memorandum in opposition filed by counsel for appellees, Arthur Dodson Wisehart, et al., on December 27, 2022; and a reply memorandum filed by appellant on January 3, 2023.

On December 19, 2022, this court filed an entry dismissing the present appeal because it was not taken from a final appealable order. The court found that there were outstanding issues remaining which had not been resolved.

In her motion for reconsideration, appellant argues that the present appeal is taken from a declaratory judgment action, which is defined as a special proceeding, and that the entry appealed from affects a substantial right. Appellant concludes that the order appealed from is therefore a final appealable order pursuant to R.C. 2505.02(B).

Respectfully submitted this 19th day of January, 2023,


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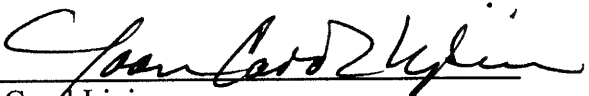
CERTIFICATE OF SERVICE

Plaintiff-Appellant Joan Carol Lipin certifies that a copy of the foregoing Notice of Appeal was served upon each Defendant-Appellee on this 19th day of January, 2023, by the United States Postal Service, First Class Mail, postage pre-paid, at the last known address of the Pro Se Defendant-Appellee and at the last known address of counsel for each Defendant-Appellee at his or her office at the last known address, as set forth below:

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Joan Carol Lipin
Plaintiff-appellant, Pro Se

***EXPLANATION OF WHY THIS DECLARATORY JUDGMENT ACTION
IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST, AND
INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION***

Statement of the Case, Undisputed Facts in the Record, and Procedural History

This declaratory judgment action is a case of public or great general interest and involves a substantial constitutional question, as shown in the above-entitled notice of appeal; in the notice and amended notices of appeal and jurisdictional statements filed in the **No. 1598** (“the lead appeal”), and in the notice, amended and second amended notice of appeals and jurisdictional statements filed, **Case No. 1603**.

That this declaratory judgment action is a case of public or great general interest and involves a substantial constitutional question also is shown by the motions to consolidate **No. 1603** with the lead appeal, **No. 1598**, and by the motion to consolidate this appeal also with the lead appeal, **Case No. 1598**, that appellant intends to file.

S. Ct. Prac. R. 5.02. Jurisdictional Appeals. (A) Definition: as used in these rules, a “jurisdictional appeal” is an appeal from an entry or order or decision of a court of appeals that asserts one or more of the following: (1) The case involves a substantial constitutional question, including an appeal from the decision of a court of appeals under App.R. 26(B) in a noncapital case, pursuant to Article IV, Section 2(B)(2)(a)(ii) of the Ohio Constitution.

This Court therefore has jurisdiction over this appeal.

The entry filed without jurisdiction by the court of appeals on January 18, 2023, is reversible because it constitutes an abuse of discretion and also, in part, because that court failed to exercise sound, reasonable, and legal decision-making. *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black's Law Dictionary* 11 (8th Ed. 2004).

In addition, the court of appeals failed to rule upon each entry of the common pleas court, *without jurisdiction*, filed on December 13, 2022, from which appellant filed her appeal, and concerning which her motion for reconsideration and motion to certify the record were denied by that court.

Indisputably, the record shows that appellant had appealed to that court from two different entries the the common pleas court (22CV34240) had filed *without jurisdiction and concurrently* while appellant's appeals were pending in the court of appeals in CA2022-09-017, **Case No. 2022-1598**, and in CA2022-11-018, **No. 2022-1603**.

The entry filed in CA2022-12-022 by the court of appeals on January 18, 2023, also was filed *without jurisdiction and concurrently* in view of the pending appeals in **No. 2022-1598**, and **No. 2022-1603**.

Even though appellant had appealed from the two different entries filed by the common pleas court, the court of appeals merely addressed one entry but not the other.

Specifically, in her notice of appeal to the court of appeals that that appeal was from the two different orders entered by the common pleas court on December 13, 2022, appellant stated as follows:

Plaintiff Joan Carol Lipin timely appeals from the "order" filed on December 13, 2022, (1) overruling plaintiff's "Notice of Motion and Motion to (1) Vacate the Decision or Non-Final Judgment and all court rulings the attorneys procured by fraud, and (2) Enter an Order by Default and Judgment by Default Against each defendant," and (2) granting the defaulting defendants' motion pursuant to R.C. 2323.51.

In addition, plaintiff Joan Carol Lipin also timely appeals from the "entry" setting an attorney's fees hearing in favor of each defaulting defendant party on January 5, 2023, without conducting the mandatory Rule 55(A) default hearing, as requested by plaintiff in her application and request for the entry of an Order by Default and Judgment by Default, that was triggered by each defendant party's failure to comply with the mandatory Rule 12(A)(1) statutory requirements.

Pursuant to Ohio Rev. Code Ann. § 2505.02, a declaratory judgment action is a special proceeding.

Accordingly, each such interlocutory filing is appealable and timely pursuant to Ohio Rev. Code Ann. §2502.02.

The following facts are undisputed.

The Clerk of Court “Successfully” served the Summons and Certified Complaint by “Certified Mail” upon each such defendant party.

Each defendant does not deny (1) that he, it, she failed to comply with the mandatory “within 28 days of service.” pursuant to Ohio Civ. R. 12(A)(1); and (2) that his, its, her neglect to comply thereunder was not excusable; and (3) that plaintiffs filed the requisite application to the Court for the mandatory Rule 55(A) default judgment hearing to be conducted; and (4) that Judge Brogan refused failed to conduct the mandatory default judgment hearing pursuant to Rule 55(A) that thereby engaged in judicial conduct that is unauthorized by law and abuse of discretion; and (5) that Judge Brogan also engaged in an abuse of discretion and judicial conduct that is unauthorized by law, as shown by the judgment he filed in favor of each defaulting judgment, all of whom are subject to liability for the relief demanded in the Declaratory Judgment Complaint filed on the 5th day of April, 2022.

A defendant who fails to answer within the required time thereby admits the allegations of the complaint, and allegations deemed admitted need not be proved.

Accordingly, the relief demanded in the declaratory judgment complaint was required to be granted, and an Order by Default and Judgment by Default was required to be entered against each defaulting defendant.

The aforesaid interlocutory order and interlocutory entry therefore violate a substantial right of plaintiff that is immediately appealable to avert irreparable injury to Joan Carol Lipin.

Probable Issue for Review

1. Did the court abuse its discretion in ruling pursuant to R.C. 2323.51, overruling plaintiff’s motion Rule 60(B)(3)(6) motion and to enter Order by Default and Judgment by Default if (a) each defendant failed to comply with Ohio Civ. R. 12(A)(1); (b) each defendants’ neglect was not excusable; (c) the court “shall” comply with Ohio Civ. R. 55(A) default hearing that is required to be conducted prior to filing an Order by Default and Judgment by Default against each defaulting party for the relief demanded in the Declaratory Judgment Complaint?

Pursuant to Ohio Rev. Code Ann. § 2505.02, a declaratory judgment action is a special proceeding. The General Assembly of the State of Ohio previously addressed the policy concerns and statutory interstices pointed out by the Supreme Court, amended section 2505.02 and, among other things, enlarged the previous three categories of final orders into the following five categories: (1) An order that affects a substantial right ... that in effect determines the action and prevents a judgment; (2) An order that affects a substantial right made in a special proceeding

Further, the substantial right inquiry can be collapsed into a ripeness question: is review of the order premature or will a denial of the appeal prejudice a party in such a way as to be irreparable on appeal after a final disposition?

For the purposes of section 2505.02 of the Ohio Revised Code, a substantial right is created in several different ways, by statute, by the common law, or by constitutional principles for the intended purpose of preserving and protecting a party's substantial rights, and on the further grounds that the practicability of an appeal after final judgment or the conclusion of a proceeding can extinguish the existence of a substantial right.

Also, if an appeal is not practicable after final judgment, a substantial right can be created by the burdens imposed by not allowing an immediate appeal.

An order that affects a substantial right in an action which in effect determines the action and prevents a judgment, an order that affects a substantial right made in a special proceeding after judgment is a final order that may be reviewed, affirmed, modified, with or without retrial.

The Ohio Supreme Court has determined that the authority of Ohio appellate courts to hear interlocutory appeals is conferred by the second prong of Ohio's final order rule: an order [that] affect[s] a substantial right made in a special proceeding.

Further, the special proceeding prong of Ohio's final order rule is deemed to permit appeals from various interlocutory orders and from certain statutorily defined proceedings.

Thus, from the point of view of Ohio law, an appealable interlocutory order is "an order affecting a substantial right made in a special proceeding."

Each express and unambiguous interlocutory order constitutes a non-final order or judgment from which Joan Carol Lipin appeals in this timely filed Notice of Appeal.

The entry filed by the court of appeals denied appellant's motion to certify the record and motion for reconsideration with knowledge to the record in its entirety that shows the common pleas court granted the defaulting defendants' motion to imposed a filing injunction against plaintiff and denied plaintiff's "Notice of Motion and Motion to to (1) vacate the decision or non-final judgment and all court ruling the attorneys, and *pro se* defendant Arthur Dodson Wisheart, procured by fraud, and (2) enter an order by default and judgment by default against each defendant.

In so doing, the court of appeals erroneously concluded such entries allegedly did not constitute "a substantial" appealable "right" and on that basis abused its authority and discretion by denying appellant's motion to certify the record. (Entry, 2, 3)

The record, however, shows to the contrary.

In the motion plaintiff filed pursuant to Ohio Civ.R. 60(B)(3), appellant expressly stated as follows:

Ohio Civ.R. 60(B)(3), (6) for an order to vacate the abuse of discretion non-final decision or non-final judgment filed on July 14, 2022 attached as Exhibit 1; the decision filed on July 21, 2022 attached as Exhibit 2; the order and entry filed on May 16, 2022 attached as Exhibit 3; the entry filed on October 26, 2022 attached as Exhibit 4; the order filed on June 8, 2022 attached as Exhibit 5; and the entry filed on September 19, 2022 attached as Exhibit 6, all of which are *void ab initio* because Attorneys Charles D. Maddox (0097493), Lindsay M. Johnson (0077753), and defendant Jane Ellen Beach, Esq., individually 0073139) procured by fraud each such filings by the Court.

That those attorneys committed fraud on the court is shown by each such filing by the Court in which the judge sitting by assignment abused his authority and engaged in judicial conduct that is unauthorized by law because a court shall not interpret a declaratory judgment complaint that speaks for itself that was filed pursuant to Ohio's Declaratory Judgments Act, R.C. 2721, and shall not interpret the dispositive facts or declarations in favor of each defendant party all of whom defaulted as shown by his/its/her failure to comply with the statutory requirements of Ohio Civ. R. Rule 12(A).

Each such aforesaid filing by the court therefore constitutes circumstantial evidence that is very strong, as when you find a trout in the milk (Thoreau, Henry David, (1817 - 1862), that those attorneys procured by fraud said filings by Judge Brogan.

Such attorney procurement by fraud also constitutes theft and fraud and tampering of the record as shown by the relief demanded in the complaint that stated as follows:

WHEREFORE, Plaintiffs Wisheart and Lipin pray that this Court enter a declaratory judgment in their favor against each Defendant and all of them for the following:

For Count One:

(a) a declaration that the "Dorothy R. Wisheart Trust Appointment Co-Trustee" 2009 non-trust document is a spurious document, pursuant to Ohio Rev. Code §Section 2913.01, without legal force or effect; and

(b) a declaration that the 2009 "Dorothy R. Wisheart Trust Appointment Co-Trustee" **non-trust document is an uncertified and unauthenticated** document without legal force or effect for the intended purpose of amending, altering, or spoliating the wholly integrated and inextricably intertwined irrevocable trust documents, inclusive of the 1987 Trust Agreement, the 1992 First Amendment thereto; the 1993 Second Amendment thereto; and the 1993 Confirmation of the First Amendment; and

(c) a declaration that the "Affidavit of Facts Relating to Title" signed and executed by Arthur D. Wisheart on the 12th day of September, 2014, is a spurious document, pursuant to Ohio Rev. Code Section 2913.01, that is without legal force or effect; and

(d) a declaration that the "Affidavit of Facts Relating to Title" signed and executed by Arthur D. Wisheart on the 4th day of June, 2015, is spurious document pursuant to Ohio Rev. Code Section 2913.01 that is without legal force or effect; and

(e) a declaration that the "Farm Lease" document signed and executed by Arthur D. Wisheart and Quentin Bowman on "9/25/2020" and "9-15-20", respectively, is spurious document pursuant to Ohio Rev. Code Section 2913.01 that is without legal force or effect; and

(f) a declaration that Arthur Dodson Wisheart, individually and aka Arthur Dodson Wisheart or Arthur D. Wisheart is not, and has never been, a "co-trustee of the Dorothy R. Wisheart trust;" and

(g) a declaration that Arthur Dodson Wisheart, individually and aka Arthur Dodson Wisheart or Arthur D. Wisheart is barred in perpetuity from falsely alleging to be "co-trustee" thereof, and required to provide public notice of such false and spurious claim in any and all domestic, international, or foreign venues; and

(h) a declaration that Quentin Bowman, individually and a/k/a QUENTIN L. or QUENTIN K. BOWMAN and/or QK Farms LLC are barred in perpetuity from committing the tort of trespass upon each of the aforesaid Properties and Farms, and all of them; and

(i) a declaration that Jane Ellen Beach, Esq., is barred from representing each Defendant, and all of them, or surreptitiously aiding and abetting the fraud of each Defendant herein, inclusive of Defendant Beach in any and all domestic, international, or foreign venues, in perpetuity.

Plaintiffs Wisheart and Lipin also pray[] that this Court enter all relief to which each Plaintiff and both of them are entitled under the law, including but not limited to compensatory damages in the amount to be determined at trial, but in excess of \$25,000.00, that includes pre-and-post judgment interest on that sum, and costs, an Order directing the Clerk of Courts to release all farm income deposited in the "SU" or "DR" escrow accounts of the Court of Common Pleas, Preble County, Ohio, as alleged above, injunctive relief, punitive damages, attorney's fees, and all other relief that the Court deems appropriate, just, and equitable. [Emphasis added.]

Indisputably, however on September 15, 2022, Judge Brogan aided and abetted the attorneys' fraud on the court in this declaratory judgment action with knowledge of the aforesaid relief plaintiffs demanded in the complaint filed on April 5, 2022, namely, for an Order directing the Clerk of Courts to release all farm income deposited in the "SU" or "DR" escrow accounts of the Court of Common Pleas, Preble County, Ohio.

In violation of the Judicial Canons, Judge Brogan, *without* subject matter jurisdiction, entered an order in the defective declaratory judgment action entitled Arthur Dodson Wisheart, in his Capacity as Co-Trustee of the Dorothy R. Wisheart Trust v. Arthur McKee Wisheart, individually and in his capacity as Co-Trustee Q/the Dorothy R. Wisheart Trust, et al., Case No. 15 CV 030565, directing the Clerk of Court to release to one Arthur Dodson Wisheart "all farm income deposited in the . . . accounts of the Court of Common Pleas, Preble County, Ohio" in the amount \$279,050.33 (Two Hundred Seventy-Nine Thousand Dollars and Thirty-Three Cents), which is in excess of half a Million Dollars concurrently while the appeal of Arthur McKee Wisheart was pending in the Court of Appeals Twelfth Appellate District of Ohio Preble County, Case No. CA2022-05-006; and after that purported action was allegedly was "closed;" and

concurrently while this declaratory judgment action remains pending before that same 82 year old judge sitting by assignment.[¹]

The general definitions of theft and fraud pursuant to Ohio Revised Code Section 2913.01 (Sept. 14, 2016), provides as follows:***

The general definition of theft pursuant to Ohio Revised Code 2913.02 (March 20, 2019) provides as follows:

(A) No person, with purpose to deprive the owner of property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways [emphasis added]: ***

(B)(l) Whoever violates this section is guilty of theft.

Attorneys Charles D. Maddox (0097493), Lindsay M. Johnson (0077753), and defendant Jane Ellen Beach, Esq., individually 0073139) by procuring each of the aforesaid *void ab initio* filings by Judge Brogan thereby also committed fraud on the court by tampering of the record as defined pursuant to Ohio Revised Code Section 2913.42 (September 30, 2011), tampering with records, provides as follows:

(A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following: ***

(B)(l) Whoever violates this section is guilty of tampering with records.

The undisputed facts in the record corroborate that each defendant failed to file any answer without excludable neglect; and failed to comply with the mandatory statutory requirements of Rule 12(A) without excusable neglect and thereby defaulted.

Ohio Civ. R. Rule 12(A) provides as follows:

A defendant must respond within 28 days after being served the summons and complaint.

¹ This court accepted for filing the notice of appeal and jurisdictional statement filed by Joan Carol Lipin, appellant, on behalf her husband Arthur McKee Wisheart (Deceased 08-05-2022), **Case No. 2022-1543** on December 14, 2022, in that defective declaratory judgment action commenced by one Arthur Dodson Wisheart on July 6, 2015, who is the same Arthur Dodson Wisheart, son of Arthur McKee Wisheart and step-son of Joan Carol Lipin, who is a defaulting defendant-appellee in this declaratory judgment action commenced by plaintiffs Joan Carol Lipin and Arthur McKee Wisheart on April 5, 2022.

The cause and effect of the procurement of the aforesaid filings by Judge Brogan by the attorneys' fraud also indisputably is corroborated by the court's refusal and failure (1) to conduct the mandatory Ohio Civ. R. Rule 55(A) default judgment hearing and (2) to enter an Order by Default and Judgment by Default against each defendant party and in favor of the plaintiffs. "Some circumstantial evidence is very strong, as when you find a trout in the milk" (Thoreau, Henry David, (1817-1862)).

But for the attorneys' procurement by fraud of each aforesaid filing by the court, the Hon. James A. Brogan would not have engaged in judicial conduct that is unauthorized by law and thereby would have violated Ohio's Code of Judicial Conduct (as amended October 15, 2020), pursuant to Canon 1, Rule 1. I - I . 3, and Canon 2, Rules 2.2-2.7, 2.9-10, that mandate a judge shall uphold and promote the independence, integrity, and impartiality of the judiciary, shall avoid impropriety and the appearance of impropriety: and shall perform the duties of judicial office impartially, competently, and diligently.

Legal Analysis

Ohio's Rule 60(b)(3) states in pertinent part that nothing in Rule 60 limits a court's power to set aside a decision or non-final judgment or order for fraud on the court.

The evidence is clear and convincing that attorneys Maddox and Johnson and defendant attorney Beach willfully committed fraud on the court and continue to commit fraud on the common pleas court and the Appellate Court, see also the pending "Joint Motion" filed on behalf of each defaulting defendant to procure by fraud purported or alleged attorney's fees filed on August 26, 2022, attached as Exhibit 7.

Fraud on the court by attorneys includes both attempts to subvert the integrity of the court and fraud by an officer of the court.

Fraud on the court also is an unconscionable plan or scheme which is designed to improperly influence the court in its decision. See *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944), dealing with fraud on the Patent Office, like the fraud upon the common pleas and appellate courts by attorney Schreyer/Beach.

The United States Supreme Court has stated that lawyers are an officer of the Court. See *In re Snyder*, 472 U.S. 634, 643(1985) (courts have inherent authority to discipline lawyers which "derives from lawyer's role as an officer of the court which granted admission").

The erroneous and abuse of discretion so-called conclusion in the entry filed on January 18, 2023, is reviewable for a further important reason.

The court of appeal failed to rule upon or determine appellant's notice of appeal from the aforesaid entry by the common pleas court, and then denied appellant's motion to certify the record allegedly or purportedly because its entry did not "create[] a conflict with a judgment or order of another court of appeals."

Indisputably, however, and as discussed below, the entry filed by the court of appeals on January 18, 2023, does "create[]" a "conflict" with its own the rulings, entries, or decisions in other cases; and with statutory and common law; and with other appellate courts that are too numerous to list, and with this Court.

Legal Analysis

The Court of Appeals, Twelfth Appellate District, has previously noted, ignorance of the law is not a valid justification for failure to defend an action, and non-attention to a legal matter because of the failure to understand its scope is also no excuse. *Zuk v. Campbell*, 12th Dist. Clermont No. CA94-03-018, 1994 Ohio App. LEXIS 6085, * 5 (Dec. 30, 1994).

See also *Whittle v. Davis*, 12th Dist. Butler No. CA2013-08-153, 2014-Ohio-445, ¶ 26 (rejecting appellants' argument that their failure to file an answer after service of the summons and complaint constituted excusable neglect due to their belief the matter would proceed to trial without them "filing papers").

In addition, the Court of Appeals, Twelfth Appellate District, also has held in other cases that it remained necessary for a defendant party pursuant to the Civil Rules, viz., Rule 12(A), to file an answer to the complaint within 28 days of service in response to the claim for damages. *Mangan* at ¶ 12-13; see also Civ.R. 12(A)(1).

The court of appeals, however, has not applied its own aforesaid standard or precedent to each defaulting defendant-appellee in this declaratory judgment action in which defendant party did not deny (1) that the Clerk of Court, Preble County, “successfully” served each defendant party; (2) that he/it/she failed to comply with Rule 12(A); or (3) that his/its/her failure to comply with Rule 12(A) was *without* excusable neglect; or (4) deny that the common pleas court relied upon its own interpretation of Rule 12(A); or (5) that the common pleas court failed to comply with the Rule 55(A) that a court “shall” conduct a default judgment hearing; or (6) that the common pleas court denied plaintiffs’ applications for a Rule 55(A) default judgment hearing; (7) or that the common pleas court denied plaintiffs’ motions for the entry of an Order by Default and Judgment by Default; or (8) that the common pleas court dismissed this declaratory judgment action under the inapplicable doctrine of res judicata and (9) set a hearing for attorney’s fees to be awarded in favor of each defaulting defendant party.

An abuse of discretion constitutes reversible error of the entry filed on January 18, 2023, because the court of appeals failed to exercise sound, reasonable, and legal decision-making *State v. Beechler*, 2d Dist. Clark No. 09-CA-54, 2010-Ohio-1900, ¶62, quoting *Black’s Law Dictionary* 11 (8th Ed. 2004).

In appellant’s view, each entry, order, or decision filed by the court of appeals in this declaratory judgment action therefore reflects a fundamental misunderstanding of, but not limited to, (1) the nature of the declaratory judgment claims before the common pleas court; or (2) its authority which required compliance with this Court’s two-part standard of review (a) pursuant to Ohio Revised Code R.C. 2505.02(A) that provides as follows:

(1) “Substantial right” means a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.

(2) “Special proceeding” means an action or proceeding that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity;

and pursuant to R.C. 2505.02(B) that provides as follows:

(B) An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:

(1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;

(2) An order that affects a substantial right made in a special proceeding;

(4) An order that grants or denies a provisional remedy and to which both of the following apply:

(a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

(b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action;

and pursuant to Ohio Civ.R. 54(B).

Indisputably, a declaratory judgment action is a special proceeding pursuant to R.C. 2505.02 because it is a special remedy not available at common law or at equity and an order entered therein which *affects* a substantial right as a final appealable order.

A “substantial right” is “a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect.” R.C. 2505.02(A)(1); *see also Armstrong v. Herancourt Brewing Co.*, 53 Ohio St. 467, 480, 42 N.E. 425 (1895) (“A substantial right involves the idea of a legal right, one which is protected by law.”).

In addition, it is well-established that “[a]n order which *affects* a substantial right has been perceived to be one which, if not immediately appealable, would foreclose appropriate relief in the future.” (Emphasis added.) (Citations omitted.) *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60,

63, 616 N.E.2d 181 (1993); *Hrabak* at ¶ 18; *Nationwide Ins. Co. v. Davey Tree Expert Co.*, 166 Ohio App.3d 268, 2006-Ohio-2018, 850 N.E.2d 127, ¶ 19 (11th Dist.).

Importantly, this Court has ruled that an appellate court reviewing a declaratory judgment matter should apply a deferential “abuse of discretion” standard in reviewing the trial court’s determination of whether the case is appropriate for declaratory judgment, but should apply a non-deferential “de novo” standard in reviewing the trial court’s determinations of legal issues in the case.

The court of appeals entry filed on January 18, 2023, therefore is reviewable, like all entries, orders, or decision(s) in this appeal, and in **No. 2022-1598** and **No. 2022-1603**, because each raises an issue that was either not considered at all or not fully considered by the court when it should have been in each of these appeals. (*Columbus v. Hodge*, 523 N.E.2d 515, 516 (Ohio Ct. App. 1987).

In its most recent, cumulative, and unconscionable entry filed on January 18, 2023, concerning the different attorney’s fees hearing the common pleas court had scheduled by filing its different entry on December 13, 2022 from which appellant had appealed in CA2022-12-022, the court of appeals stated that:

In the present case, the entry appealed from sets a hearing date to allow appellant to contest issues pertaining to a motion for attorney fees based upon alleged frivolous conduct by appellant. An entry setting a hearing does not affect a substantial right that the U.S. Constitution, the Ohio Constitution, a statute, the common law or rule of procedure entitles appellant to enforce or protect.

Such arbitrary and misleading statements, however, are contrary to the record.

“An entry setting a hearing [for attorney’s fees] does [] affect a substantial right that the U.S. Constitution, the Ohio Constitution, a statute, the common law or rule of procedure entitles appellant to enforce or protect,” and therefore constitutes an appealable entry in view of the facts of this declaratory judgment action in which each defendant party failed to comply with Rule 12(A) *without excusable neglect*.

The court of appeals also abused its authority and its discretion because that different entry affected a substantial right of appellant as shown by the entry of the common pleas court that speaks for itself, in which that court stated (Entry, 2) stated, in part, as follows:


Plaintiff may contest both the amount of fees requested and whether the Complaint was in fact [allegedly] frivolous. [Emphasis in the original.]

Indisputably, the entry filed on January 18, 2023, was filed after the common pleas court granted plaintiff’s motion and supplemental motion to stay the attorney’s fees hearing on January 5, 2023 (22 CV 32420), in which the common pleas court stated as follows:

Before the Court are Plaintiff’s Notice of Motion and Motion to Stay the Entry and the Order Each Filed on December 13, 2022, on the Grounds that Jurisdiction Lies in the Court of Appeals, Not in this Court, filed December 15, 2022 *and* Plaintiff’s Supplement to Motion to Stay the Entry and Order Filed on 12-13-2022, and to Stay the Purported Attorney’s Fee Hearing Scheduled to be Conducted on 01-05-2023, filed December 22, 2022.

After due consideration, the motions are granted. The matter is stayed until the ~~Court of Appeals~~ rules on any pending appeals in this matter.

Supreme Court



Judge James A. Brogan
Sitting by Assignment

It is well established that the principles of res judicata and collateral estoppel is not mandatory in every case. *Castorr v. Brundage*, 674 F.2d 531, 536 (6th Cir.1982).

Indisputably, the principles of res judicate and collateral estoppel would not apply if a defendant party were a defaulting defendant party like each defaulting defendant-appellee in this declaratory judgment action.

Importantly, this Court has recognized “that *res judicata* is not a shield to protect the blameworthy.” *Davis v. Wal-Mart Stores, Inc.*, 93 Ohio St.3d 488, 491, 756 N.E.2d 657 (2001):

The doctrine of res judicata is not a mere matter of practice or procedure inherited from a more technical time, but rather a rule of fundamental and substantial justice, or public policy and of private peace. The doctrine may be said to adhere in legal systems as a rule of justice. Hence, the position has been taken that the doctrine of res judicata is to be applied in particular situations as fairness and justice require, *and that it is not to be applied so rigidly as to defeat the ends of justice or so as to work an injustice.* (Internal citations omitted.) *Id.* [Emphasis added.]

Each defaulting defendant-appellee is “blameworthy” in this declaratory judgment action which renders the filings by the court of appeals and the common pleas court to be appealable because each such filing *affects* a substantial right of Joan Carol Lipin, plaintiff-appellant.

Further, it is well-established by this Court that the application of res judicata is reviewed de novo on appeal. *McGowan v. McDowell*, 11th Dist. Portage No. 2008-P-0112, 2009-Ohio-5891, ¶ 18; *Zamos v. Zamos*, 11th Dist. Portage No. 2008-P-0021, 2009-Ohio-1321, ¶ 14.

The court of appeals failed to do so.

In appellant’s view, each filing by the court of appeals also reflects a fundamental misunderstanding of, but not limited to, (1) the United States Constitution; or (2) Article IV, Section 3(B)(4) of the Ohio Constitution; or (3) Ohio’s Declaratory Judgments Act, R.C. 2721; or

(4) App.R. 25(A); or (5) Ohio Civil Rule 4; or (6) Ohio’s Civil Rule 12(A); or (7) Ohio’s Civil Rule 55(A); or (8) R.C. 2323.52; or (9) the doctrine of res judicata.

In addition, the record shows the court of appeals failed to comply with the standard of review that was required to be applied to this appeal; to **No. 2022-1598**; or to **No. 2022-1603**.

Each appeal involves the same or identical variables that lend themselves toward consolidation in this declaratory judgment action in which each defendant-appellee defaulted and because a *defendant who fails to answer within the required time thereby admits the allegations of the complaint, and allegations deemed admitted need not be proved.*

Pursuant to Ohio R.C. 2505.02(A)(1)(2), appellant therefore may appeal each interlocutory order, decision, or non-final judgment, or entry filed in in this declaratory judgment action or special proceeding because each *affects* a substantial right of appellant (1) that in effect determines the action and prevents a judgment in favor of plaintiff-appellant and against each defaulting defendant-appellee in the instant case, or (2) that affects a substantial right in a special proceeding, and thereby meeting the definition of a “final order” under R.C. 2505.02(B).²

In view of the foregoing, this declaratory judgment action is a case that raises a substantial constitutional question and is one of public or great general interest.

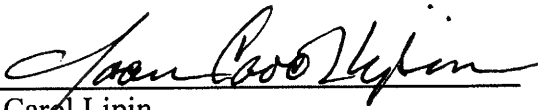
² Appellant also raises this issue in **2022-1543**. Arthur Dodson Wisheart (“Wisheart”), appellee, commenced a defective declaratory judgment action as a non-cognizable plaintiff, *without standing*, on July 6, 2015. In that defective action, Wisheart did not deny that all filings by the court of appeals and the common pleas court were rendered to be advisory, or that the common pleas court lacked jurisdiction and had no discretion but to dismiss the defective action for Wisheart’s failure to comply with the Compulsory Joinder Clause, R.C. 2721.12(A) of Ohio’s Declaratory Judgments Act, R.C. 2721, and refusal to join his step-mother Joan Carol Lipin as a necessary and interested party with legally protected rights whose interests were in privity with those of her husband Arthur McKee Wisheart, and whose interests continue to be in privity with those of her deceased spouse, and adverse to defendant-appellee Arthur Dodson Wisheart.

CONCLUSION

Plaintiff-Appellant Joan Carol Lipin respectfully requests this notice of appeal and jurisdictional statement, and the notice and amended notices of appeal and jurisdictional statements filed in the lead appeal, **Case No. 2022-1598**, and her notice, amended and second amended notices of appeal and jurisdictional statements filed in **Case No. 2022-1603**, respectively, be accepted for appellate review together with the issuance of a briefing schedule, and with such other and further relief as this Court may deemed to be just and equitable.

In addition, the undersigned respectfully requests that the notice and amended notices of appeal and jurisdictional statements filed by Joan Carol Lipin, Appellant, on behalf of Arthur McKee Wisehart (Deceased 08-05-2022), filed in this Court's **Case No. 2022-1543**, be accepted for appellate review together with the issuance of a briefing schedule, and such other and further relief as this Court may deemed to be just and equitable.

Respectfully submitted this 19th day of January, 2023,


Joan Carol Lipin
Plaintiff-appellant, Pro Se


CERTIFICATE OF SERVICE

Plaintiff-Appellant Joan Carol Lipin certifies that a copy of the foregoing second amended notice of appeal and jurisdictional statement was served upon each Defendant-Appellee on this 19th day of January, 2023, by the United States Postal Service, First Class Mail, postage pre-paid, at the last known address of the Pro Se Defendant-Appellee and at the last known address of counsel for each Defendant-Appellee at his or her office at the last known address, as set forth below:

Arthur Dodson Wisehart, individually and aka Arthur Dodson Wisehart or Arthur D. Wisehart co-trustee of the Dorothy R. Wisehart Trust
39508 Pitkin Road, Paonia, CO 81428
Ph. (773)-394-1146; wischartart@gmail.com
Defendant-Appellee, Pro Se

Charles D. Maddox (0097493)
Bolin & Troy, LLC
29 N. Beech Street
Oxford, Ohio 45056
Ph. (513)-523-6369; charles@bolintroy.com
Attorney for Defendant-Appellee *Quentin Bowman, individually and a/k/a Quentin L. Bowman or Quentin K. Bowman*, and Defendant-Appellee *QK Farms LLC*

Lindsay M. Johnson (0077753)
Freund, Freeze & Arnold
Fifth Third Center, 1 South Main Street, Suite 1800
Dayton, OH 45402
Ph. (937)-222-2424; ljohnson@ffalaw.com
Attorney for Defendant-Appellee *Jane Ellen Beach, Esq., individually*


Joan Carol Lipin
Plaintiff-Appellant, Pro Se

FILED
PREBLE COUNTY OH
01/18/2023 08:19 AM
BRIONNE REYNOLDS
CLERK OF COURTS OF APPEALS
2022CA120022

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
PREBLE COUNTY

JOAN CAROL LIPIN,

Appellant,

vs.

ARTHUR DODSON WISEHART, et
al.,

Appellees.

CASE NO. CA2022-12-022
REGULAR CALENDAR

ENTRY DENYING MOTION FOR
RECONSIDERATION AND MOTION
TO CERTIFY RECORD

The above cause is before the court pursuant to a motion for reconsideration and motion to certify the record filed by appellant, Joan Carol Lipin, on December 21, 2022; a memorandum in opposition filed by counsel for appellees, Arthur Dodson Wisehart, et al., on December 27, 2022; and a reply memorandum filed by appellant on January 3, 2023.

On December 19, 2022, this court filed an entry dismissing the present appeal because it was not taken from a final appealable order. The court found that there were outstanding issues remaining which had not been resolved.

In her motion for reconsideration, appellant argues that the present appeal is taken from a declaratory judgment action, which is defined as a special proceeding, and that the entry appealed from affects a substantial right. Appellant concludes that the order appealed from is therefore a final appealable order pursuant to R.C. 2505.02(B).

It is beyond dispute that a declaratory judgment action is a special proceeding, but appellant apparently believes that every interlocutory filing made in a special proceeding is immediately appealable. However, a decision appealed from in a special proceeding is not a final appealable order unless it affects a substantial right. R.C. 2505.02(A)(1) defines a substantial right as a right that the U.S. Constitution, the Ohio Constitution, a statute, a common law or a rule of procedure entitles a person to enforce or protect.

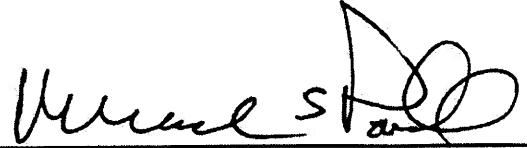
In the present case, the entry appealed from sets a hearing date to allow appellant to contest issues pertaining to a motion for attorney fees based upon alleged frivolous conduct by appellant. An entry setting a hearing does not affect a substantial right that the U.S. Constitution, the Ohio Constitution, a statute, the common law or rule of procedure entitles appellant to enforce or protect.

The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls the attention of the court to an obvious error in its decision, or raises an issue for consideration that was either not considered at all or not fully considered by the court when it should have been. *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist. 1981). Appellant has failed to call the attention of this court to an obvious error or raise an issue that was not fully considered by the court. The motion for reconsideration is therefore DENIED.

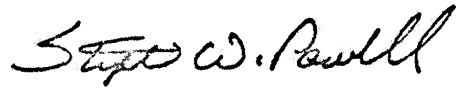
Pursuant to App.R. 25, a motion to certify conflict should be granted when the attention of the court is called to a decision that creates a conflict with a judgment or order of another court of appeals. Appellant states that this court's decision is in conflict with a Tenth District Court of Appeals case, *In Re: S. Children*, 1st Dist. Hamilton Nos.

C-210672, C-210680, C-220005, C-220006, 2022-Ohio-2941. However, a review of the *In Re: S. Children* case reveals no conflict and the motion to certify conflict is accordingly DENIED.

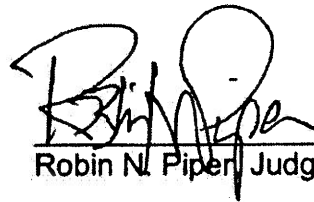
IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Mike Powell", written over a horizontal line.

Mike Powell, Judge

A handwritten signature in black ink, appearing to read "Stephen W. Powell", written over a horizontal line.

Stephen W. Powell, Judge

A handwritten signature in black ink, appearing to read "Robin N. Piper", written over a horizontal line.

Robin N. Piper, Judge

FILED
PREBLE COUNTY OH
12/13/2022 10:37 AM
BRIONNE REYNOLDS, CLERK OF COURTS
22CV032420

IN THE COMMON PLEAS COURT OF PREBLE COUNTY, OHIO

JOAN CAROL LIPIN, et al.,

Plaintiffs

vs.

ARTHUR DODSON WISEHART, etc.,
et al.,

Defendants

* CASE NO. 22CV032420

Judge James A. Brogan
Sitting by Assignment

* ORDER GRANTING
DEFENDANTS' JOINT
MEMORANDUM IN OPPOSITION
TO PLAINTIFF'S "NOTICE OF
MOTION AND MOTION TO (1)
VACATE ..., AND (2) ENTER AN
ORDER BY DEFAULT..."
*

Upon written opposition of Defendants, and for good cause shown, Plaintiff's "Notice of Motion and Motion to (1) Vacate the Decision or Non-Final Judgment and All Court Rulings the Attorneys Procured by Fraud, and (2) Enter an Order by Default and Judgment by Default Against Each Defendant" is hereby overruled.

IT IS SO ORDERED:


JUDGE JAMES A. BROGAN

Copies of the foregoing were served upon the following on the date of filing:

Joan Carol Lipin, 45 East 89th Street, Apartment 14G, New York, NY 10128, Plaintiff *Pro Se*,
jclipin@aol.com

Charles D. Maddox, BOLIN & TROY, LLC, 29 N. Beech Street, Oxford, Ohio 45056,
charles@bolintroy.com, Attorney for Defendant, Quentin Bowman and QK Farms, LLC

Jane E. Beach, MURR COMPTON CLAYPOOLE & MACBETH, 401 East Stroop Road,
Kettering, Ohio 45429, jbeach@mccmlawyers.com, Attorney for Defendant Arthur Dodson
Wisehart, in his capacity as Co-Trustee of the Dorothy R. Wisehart Trust

Arthur Dodson Wisehart (individually and aka Arthur Dodson Wisehart or Arthur D. Wisehart,
co-trustee of the Dorothy R. Wisehart Trust), 39508 Pitkin Road, Paonia, CO 81428,
wisehartart@gmail.com, Defendant *Pro Se*

FILED
PREBLE COUNTY OH
12/13/2022 10:37 AM
BRIONNE REYNOLDS, CLERK OF COURTS
22CV032420

IN THE COURT OF COMMON PLEAS, PREBLE COUNTY, OHIO

JOAN CAROL LIPIN, et al.,

PLAINTIFF,

CASE NO. 22 CV 32420

VS.

ENTRY

ARTHUR DODSON WISEHART, et al.,

DEFENDANT.

On August 26, 2022, the Defendants filed a motion for attorney's fees in this matter. They are asking the Court to award them a total of \$32,319.77 for their defense of the Plaintiffs' frivolous action. Counsel for the Defendants argue that this Court need not determine the reasonableness of these fees citing Bowling v. Stafford Company L.P.A., 2010-Ohio-2769. That is not the present law. RC 2323.51 as amended in 2019 provides in pertinent part:

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section and except as otherwise provided in division (E)(2)(b) of section 101.15 or division (I)(2)(b) of section 121.22 of the Revised Code, at any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

FILED


PREBLE COUNTY OH

12/13/2022 10:37 AM

BRIONNE REYNOLDS, CLERK OF COURTS

22CV032420

Setting for Thursday, January 5, 2023 at 1:00 p.m. at the Preble County Courthouse on defense counsel's motion. Plaintiff may contest both the amount of fees requested and whether the Complaint was in fact frivolous. Joan Lipin may participate by telephone should she wish to do so. She may contact the Court at 937.456.8165 on the above date and time.



Judge James A. Brogan
Sitting by Assignment

cc: Joan Carol Lipin
Arthur Dodson Wisehart
Charles D. Maddox
Lindsay Marsico Johnson
Jane E. Beach