IN THE SUPREME COURT OF OHIO

JOAN CAROL LIPIN, Plaintiff-Appellant v. ARTHUR DODSON WISEHART, individually, and a/k/a ARTHUR DODSON WISEHART or ARTHUR D. WISEHART co-trustee of the Dorothy R. Wisehart 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, Defendants-Appellees.	* * *	**CASE NO.: 2022-1598** On Appeal from the Preble County Court of Appeals, Twelfth Appellate District Case No.: CA2022-09-017 (*Civil Other-Declaratory Judgment Action*)

SECOND AMENDED NOTICE OF APPEAL AND JURISDICTIONAL STATEMENT

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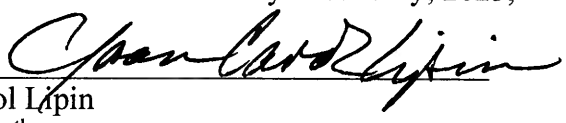
RECEIVED
JAN 27 2023
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
JAN 27 2023
CLERK OF COURT
SUPREME COURT OF OHIO

Joan Carol Lipin, plaintiff-appellant, respectfully amends her notice and amended notice of appeal and jurisdictional statements, incorporated by reference herein as if in full force and effect, from the entry by the Court of Appeals, Twelfth Appellate District on January 18, 2023 ("entry"), denying appellant's motion for reconsideration and motion to certify the record, from which appellant also filed her notice of appeal and jurisdictional statement therefrom in **No. 23-0079** on January 20, 2023.

The aforesaid court of appeals entry is connected to **No. 22-1598** because it was filed in this declaratory judgment case that raises a substantial constitutional question, is of public or great general interest, and affects a substantial right of appellant, as discussed below.

Respectfully submitted this 26th day of January, 2023,



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CERTIFICATE OF SERVICE

Appellant Joan Carol Lipin certifies that a copy of the foregoing second amended notice of appeal and jurisdictional statement was served upon each Appellee on this 26th day of January, 2023, by the United States Postal Service, First Class Mail, postage pre-paid, 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; wisehartart@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 Defendants-Appellees *Quentin Bowman, individually and a/k/a Quentin L. Bowman or Quentin K. Bowman*, and *QK Farms LLC*

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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

Rights protected by the United States Constitution are deemed to be substantial. *Watson & Co. v. Sullivan*, 5 Ohio St. 42 (1855).

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." 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.").

"An 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).

The entry denying appellant's motion for reconsideration and motion to certify the record in this declaratory judgment action affects a substantial right of appellant.

It affects a substantial right because the court of appeals' entry is silent as to both (1) the filing injunction it imposed against appellant and (2) the filing injunction the common pleas court imposed against plaintiff pursuant to R.C. § 2323.52, each at the request of all defaulting defendants-appellees that did not deny each of them failed to comply with Ohio Civ.R. 12(A), without excusable neglect; or that the Clerk of Court, Preble County, "successfully" served all of them pursuant to Ohio Civ.R. 4; or that the common pleas court failed to comply with Ohio Civ.R. 55(A) that a court "shall" conduct a default judgment hearing, as requested by plaintiffs and, based on its own interpretation of Rule 12(A); or that the common pleas court granted the defaulting defendants' "joint" Rule 12(B)(6) motion under the inapplicable doctrine of res

judicata, and denied appellant's motions for an Order by Default and Judgment by Default to be entered against each defendant-appellee.

It is a fundamental doctrine of law that a party to be affected by a personal judgment must have her day in court, and an opportunity to be heard. 30A *Am Jur Judgments'* 44, 45, provides as follows:

> **Due Process is a requirement of the U.S. Constitution.** Violation of the United States Constitution by a judge deprives that person from acting as a judge under the law. He is acting as a private person, and not in the capacity of being a judge (and, therefore, has no jurisdiction).

The entry filed by the court of appeals conflicts with its own prior entries in other cases in which that court has held 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").

Further, the same court of appeals 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 entry filed on January 18, 2023, therefore conflicts with the court of appeals' own precedent, with other appellate courts, and with opinions of this Court.

The entry filed on January 18, 2023, also constitutes an abuse of authority and discretion because it is arbitrary, unconscionable, or unreasonable and affects a substantial right of appellant.

It is unreasonable because there is no sound reasoning process that would support it because all defendants-appellees failed to comply with Rule 12(A) and it is well-established that 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.***

Moreover, the entry is unconscionable because it is silent as to both its own and the common pleas court's inapplicable, ambiguous, and overly broad filing injunctions, as stated, in the relevant part therein, 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 remaining issues remaining that 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. 20505.02(B). [Entry 01-18-2023, 1]
>
> *****
>
> .... 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(A1) 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 order appealed from sets a hearing date to allow appellant to contest issues pertaining to a motion for attorney's 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. [*id.*, 2]

Furthermore, that abuse of discretion entry is unconscionable, arbitrary, and unreasonable because it is silent as to the entry of the common pleas court that stated as follows:

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

Contrary to court of appeals entry, the common pleas court's "entry setting" the attorney's fees "hearing" does "affect a substantial right of appellant that the U.S. Constitution, the Ohio Constitution, a statute, the common law or rule of procedure entitles appellant to enforce or protect" (*id.*).

That entry therefore affects a substantial right because it denied appellant's motion to certified the record (Entry, 3).

The unconscionable, unreasonable, abuse of discretion 7-page court of appeals filing injunction entered against appellant, pursuant to R.C. § 2323.52, on January 4, 2023, from which appellant has appealed, stated therein, at page 7, as follows:

> Based on the foregoing, IT IS HEREBY ORDERED that Lipin must obtain leave of court before filing any appeal or original action in this court. Failure to obtain leave to proceed shall result in dismissal of the appeal or original action. The court declines to impose sanctions upon Lipin at this time, but if she continues to submit frivolous filings, the court will not hesitate to impose sanctions, including contempt, costs and attorney fees as appropriate. [Emphasis added.]

Every person, however, is entitled to an opportunity to be heard in a court of law upon every question involving her rights or interests, before she is affected by any judicial decision on the question.

The entry denied appellant's motion to certify the record. (Entry, 01/18/2023, 3)

In accordance with both filing injunctions, Joan Carol Lipin therefore would be required to seek "permission" from the court of appeals or the common pleas to appeal from the

attorney's fees hearing and the final judgment and decision resulting therefrom, or she would be required to seek "permission" from the common pleas court to file a Rule 60 motion to vacate, if necessary.

Accordingly, the void overly broad and ambiguous filing injunction entered by the court of appeals, and the common pleas court, violated Joan Carol Lipin's constitutional rights.

Moreover, the entry filed on January 18, 2023, affects a substantial right of appellant because it is silent as to the common pleas court's denial of plaintiff's motion pursuant to Ohio Civ.R. 60(B)(3), that 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: ***
>
> *****
>
> 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 Wisehart, in his Capacity as Co-Trustee of the Dorothy R. Wisehart Trust v. Arthur McKee Wisehart, individually and in his capacity as Co-Trustee Q/the Dorothy R. Wisehart Trust, et al., Case No. 15 CV 030565, directing the Clerk of Court to release to one Arthur Dodson Wisehart "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 Wisehart 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: ***

*****

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: ***

*****

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: ***

*****

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 (l) 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

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[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 Wisehart (Deceased 08-05-2022), **Case No. 2022-1543**.

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 entry of the common pleas court, as to which the court of appeals is silent, stated as follows:

Upon the written opposition of Defendants, and for good cause shown, Plaintiff's "Notice of 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.

Furthermore, the unconscionable and unreasonable entry failed to address the issues raised in appellant's notice of appeal that 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 enter[ing an] 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 record shows that the common pleas court failed to comply with Ohio Civ.R. 55(a), and granted the defaulting defendants' Ohio Civ.R. 12(B)(6) "joint-motion" to dismiss pursuant the inapplicable principle of res judicata.

This Court, however, has 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.

This Court has held that 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.

The entry filed by the court of appeals on January 18, 2023, therefore affects a substantial right of appellant.

Moreover, it affects a substantial right because the court of appeals also failed to comply with the standard of review 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 entry file on January 18, 2023, entry denying appellant's motion to certify the record therefore conflicts with *McGowan v. McDowell* and *Zamos v.Zamos*.

Moreover, the entry is unreasonable and arbitrary because it is an impossibility under existing law or fact in a declaratory judgment action, commenced pursuant to R.C. 2721, for defaulting defendant parties, such as each of them herein, to procure by fraud a judgment based on a Rule 12(B)(6) motion, under the inapplicable doctrine of res judicata, in reliance on the common pleas court's own interpretation of Rule 12(A).

A judgment may not be rendered in violation of constitutional protections.

In addition, the validity of a judgment may be affected by a failure to give the constitutionally required opportunity to be heard.

Both the court of appeals and common pleas court failed to give the constitutionally required as to appellant's opportunity to be heard.

All filings by the court of appeals, including the entry filed on January 18, 2023, and all filing by the common pleas court therefore are void and are not entitled to the respect accorded a valid adjudication or entry.

Each such filings by the court of appeals or the common pleas court therefore may be entirely disregarded, or declared inoperative in which effect the defaulting defendants-appellees

sought to be given to it, and such entries are attended by none of the consequences of a valid adjudication.

Accordingly, the entry filed by the court of appeals on January 18, 2023, like each prior entry, has no legal or binding force or efficacy for any purpose or at any place, is not entitled to enforcement, because all proceedings founded on the void judgment are themselves regarded as invalid.

An abuse of discretion constitutes reversible error.

The entry constitutes reversible error, 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 pursuant to Ohio Revised Code R.C. 2505.02(A); R.C. 2505.02(B); and/or 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 <u>not</u> available at common law or at equity and an order entered therein which *affects* a substantial right as a final appealable order, as discussed above.

This declaratory judgment case raises a substantial constitutional question and is one of public or great general interest.

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, <u>would foreclose appropriate relief in the future</u>." (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.

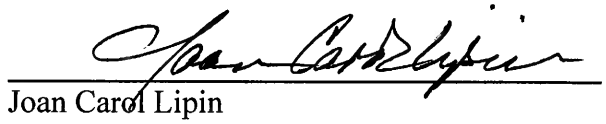
The court of appeals failed to do so which renders the entry filed on January 18, 2023, reviewable, like each piece-meal entry, and all of them.

It, and all of them, also are reviewable because the court of appeals either did not consider an issue at all or did not fully consider it even though appellant raised said issues on appeal in that court. (*Columbus v. Hodge*, 523 N.E.2d 515, 516 (Ohio Ct. App. 1987).

CONCLUSION

Plaintiff-Appellant Joan Carol Lipin respectfully requests her appeals filed in No. 22-1598, No. 22-1603, and No. 23-0079 to be accepted for appellate review together with the issuance of a briefing schedule; her motions to consolidate these appeals to be granted, and such other and further relief as this Court may deemed to be just and equitable.

Respectfully submitted this 26th day of January, 2023,



Joan Carol Lipin
Plaintiff-appellant, Pro Se

CERTIFICATE OF SERVICE

Appellant Joan Carol Lipin certifies that a copy of the foregoing second amended notice of appeal and jurisdictional statement was served upon each Appellee on this 26th day of January, 2023, by the United States Postal Service, First Class Mail, postage pre-paid, 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; wisehartart@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 Defendants-Appellees *Quentin Bowman, individually and a/k/a Quentin L. Bowman or Quentin K. Bowman*, and *QK Farms LLC*

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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.

Mike Powell, Judge

Stephen W. Powell, Judge

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.,	*	**CASE NO. 22CV032420**
Plaintiffs		**Judge James A. Brogan** **Sitting by Assignment**
vs.	*	
ARTHUR DODSON WISEHART, etc., et al.,	*	**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..."**
Defendants		
	*	

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*

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Lindsay M. Johnson, FREUND, FREEZE & ARNOLD, Fifth Third Center, 1 South Main Street, Suite 1800, Dayton, OH 45402-2017, ljohnson@ffalaw.com, Attorney for Defendant, Jane Ellen Beach, Esq.

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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.

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This Court shall set a hearing 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.

James A. Brogan

Judge James A. Brogan
Sitting by Assignment

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