

IN THE SUPREME COURT OF OHIO

STATE OF OHIO, EX REL.)	Case No. 2022-1432
ANDREA M. HARRIS)	
)	
Appellant,)	
)	On Appeal from the Montgomery
)	County Court of Appeals,
vs.)	Second Appellate District
)	Case No.: CA 029278
HON. JULIE BRUNS, JUDGE,)	
ET AL.)	
Appellees.)	
)	

REPLY BRIEF OF APPELLANT ANDREA M. HARRIS

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Now comes Appellant Andrea M. Harris, by and through her legal counsel, and hereby submits her Reply Brief.

LAW AND ARGUMENT

Appellees Merit Brief Untimely Filed

Appellant contends that Appellees failed to file a merit brief within the time prescribed by S.Ct.Prac.R 16.03(A)(1). As the appeal involves a termination of parental rights, S.Ct.Prac.R. 16.03(A)(1) requires the Appellees' brief to be filed within twenty (20) days after the filing of Appellant's brief. Both briefs reference the termination of legal custody issue. Appellant filed her brief on December 29, 2022. Appellees did not file their brief until January 27, 2023, twenty-nine (29) days after the filing of Appellant's brief. This court has held, "[i]f the appellee fails to file a merit brief within the time provided by S.Ct.Prac.R. 16.03 or as extended in accordance with S.Ct.Prac.R. 3.03, the Supreme Court may accept the appellant's statement of facts and issues as correct and reverse the judgment if the appellant's brief reasonably appears to sustain reversal."

State ex rel. Poulton v. Cottrill , 147 Ohio St. 3d, 402 at P5, 2016-Ohio-5789, 66 N.E.3d 716, quoting, S.Ct.Prac.R. 16.07(B). As a result and pursuant to S.Ct.Prac.R. 16.07(B), Appellant respectfully requests this Honorable Court to accept the Appellant's statement of facts and propositions of law as correct and controlling and reverse the October 4, 2022, Decision and Final Judgment Entry of the Montgomery County Court of Appeals, grant and approve Appellant's Complaint for Writ of Prohibition, and remand the matter with an order to vacate any and all orders of the Montgomery Juvenile Court as it relates to appellant and her minor child, A.Y.S. (DOB: 01/31/2012).

Standard of Review

Appellant disagrees with Appellee's contention that the standard of review is an abuse of discretion standard. Instead, and pursuant to this Court's prior holdings, Appellant contends the proper standard is a de novo review of the October 4, 2022, Decision and Final Judgment Entry of the Montgomery County Court of Appeals.

Appellees reliance on *State ex rel. Technical Constr. Specialties, Inc. v. DeWeese*, 155 Ohio St.ed 484 is misplaced as said case refers to a laches argument and not a writ of prohibition to address the misapplication of law resulting in a lack of jurisdiction. The court does not specifically address the standard of review argument, but simply references "discretion" and "abused" in the same statement. Their citation to *State ex rel. Allen v. Goulding*, 156 Ohio St.3d 337, 2019-Ohio-858, 126N.E.3d 1104, pertains to writs of mandamus and not writs of prohibition.

This court, on the other hand, provided a detailed analysis of proper standards of review in *Johnson v. Abdullah*, 166 Ohio St.3d 427, 2021-Ohio-3304, 187 N.E.3d 463. In *Johnson*, the court reviewed Evid.R. 601. This court held, "No court—not a trial court, not an appellate court, nor even a supreme court—has the authority, within its discretion, to commit an error of law." Id at P38, quoting *State v. Boles*, 187 Ohio App.3d 345, ¶26. This court continued to opine, "This should be axiomatic: a court does not have discretion to misapply the law. A court has discretion to settle factual disputes or to manage its docket, for example, but it does not have discretion to apply the law incorrectly. This is why courts apply a de novo standard when reviewing issues of law." *Johnson* at P38. As noted in Appellant's Merit Brief, the lower court failed to apply the law, the Uniform Child Custody Enforcement and Jurisdiction Act. A de novo standard of review is necessary in light of this court's prior holdings and to right the wrong committed in the lower

court that not only violated the rights of the Appellant but also was in direct conflict to the best interests of the minor child in question.

Proposition of Law No. I:

The appellate court was presented with proper evidentiary material from which to evaluate and confirm appellant's claim for a writ of prohibition

The Appellees attempt to support their position against Appellant's Proposition of Law No. I with Ohio Appellate Rules of Procedure sections. First, said sections pertain to procedure practices in the state's appellate districts and have no influence upon the Ohio Supreme Court. Instead, the Rules of Practice of the Supreme Court of Ohio shall apply to all documents filed with the Supreme Court. (See S.Ct.Prac.R 1.04). Notwithstanding and as noted in Appellant's merit brief and attached in the Appendix, each of the exhibits attached to Appellant's Complaint for Writ of Prohibition have the respective clerk of court's official stamp confirming the specific filing date and thus a reliable designation within the court's record, the court, and the transaction number (Nevada filings, only). Two of the exhibits are from the Montgomery County clerk's office. The very evidence rule cited by Appellees further supports Appellant's position. Ohio Evid.R. 901(7) provides that an example of a proper authenticated document is: "(7) Public Records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept." The exhibits to the Complaint for Writ of Prohibition are all public records, holdings from the Nevada Court and Montgomery County

Ohio court. No issue of dispute has been raised by either party with regard to said evidentiary exhibits and the accuracy of the respective courts' clerk of courts "cannot reasonably be questioned." As such, the protective mandates and intent of Ohio Evid. R. 201 have been met.

Proposition of Law No. II:

Courts are bound by the Uniform Child Custody Jurisdiction and Enforcement Act, incorporated in Ohio and codified in Ohio Revised Code Section 3127.01, et seq.

The Appellees have failed to offer any argument in contradiction to this proposition of law. Not one reference to the Uniform Child Custody Jurisdiction and Enforcement Act, codified in Ohio Revised Code Section 3127.01, et seq. may be found in Appellee's Merit Brief. As noted above for Appellees failure to timely file their merit brief, by not offering an argument to the counter Appellant's Proposition of Law No. II and pursuant to S.Ct.Prac.R. 16.07(B), Appellant respectfully requests this Honorable Court to accept the Appellant's statement of facts and propositions of law as correct and controlling and reverse the October 4, 2022, Decision and Final Judgment Entry of the Montgomery County Court of Appeals, grant and approve Appellant's Complaint for Writ of Prohibition, and remand the matter with an order to vacate any and all orders of the Montgomery Juvenile Court as it relates to appellant and her minor child, A.Y.S. (DOB: 01/31/2012).

Proposition of Law No. III:

Appellant's Writ of Prohibition must be granted to keep consistency and maintain the intent of the legislature for the greater public good.

As noted herein, Appellees have exercised judicial power and authority by entering a custody order concerning the Appellant's minor child, A.Y.S. without authority to exercise such power. This lack of jurisdiction is patent and unambiguous as further confirmed in *Appendix 2*. To undue the wrong committed by Appellees and protect the minor child and the public interest moving forward, Appellant filed a Writ of Prohibition. It is not disputed that the Writ of Prohibition is the proper vehicle to vacate the orders of the Montgomery County Juvenile Court and decisions of the Appellees.

Appellees agree with Appellant's brief concerning the grounds to prevail on a complaint for writ of prohibition. Further, Appellee's brief is completely devoid of any counter argument to Appellant's proposition that the lower court patently and unambiguously lacks jurisdiction to have proceeded in the custody matter. As a result, this court's holding in *State ex rel. Mayer v. Henson*, 97 Ohio St.3d 276, 2002-Ohio-6323, 779 N.E.2d 223 prevails. In *Mayer*, this court held, “[i]f a lower court patently and unambiguously lacks jurisdiction to proceed in a cause, [a writ of] prohibition ... will [be] issue[d] to prevent any future unauthorized exercise of jurisdiction and to correct the results of prior jurisdictionally unauthorized actions.” Id at ¶ 12.

Assuming arguendo that Appellant is required to demonstrate the absence of an adequate remedy at law, following the Ohio Supreme Court's ruling in *State ex rel. V.K.B.*, 138 Ohio St.3d 84,87, 2013-Ohio-5477, 3 N.E.3d 1184., this court should recognize that an appeal would not be an adequate remedy in this matter and

Appellant's only conceivable and reasonable options was the complaint for writ of prohibition. Appellees concur with Appellant that the present case shares a lot of similarities with *State ex rel. V.K.B.*. See Appellee Brief at p.8. The remaining text following Appellee's acquiescence to the holding in *V.K.B.* is opinion and not supported by any authority.

CONCLUSION

The October 4, 2022, Decision and Final Judgment Entry of the Montgomery County Court of Appeals is fundamentally wrong and contrary to sound public policy, law, and precedent. If not reversed, the appellate court decision would not only undermine the Ohio and Nevada legislature, but the full faith and credit principle embodied in 28 USCS §178A of the United States Code concerning child custody determinations. The Uniform Child Custody Jurisdiction and Enforcement Act addresses interstate recognition and enforcement of child custody orders as adopted in 1997 by the national conference of commissions on uniform state laws. Every state, except for one, has adopted the UCCJEA. The lower court decision, if not reversed, will create disorder and chaos with regard to child custody matters and revert back to a dark time and would fail to protect the best interests of our most important assets, our children.

The Appellant respectfully requests that this Honorable Court reverse the October 4, 2022, Decision and Final Judgment Entry of the Montgomery County Court of Appeals, grant and approve Appellant's Complaint for Writ of Prohibition, and remand the matter with an order to vacate any and all orders of the Montgomery Juvenile Court as it relates to appellant and her minor

child, A.Y.S. (DOB: 01/31/2012).

Respectfully submitted,

/s Gregory S. Costabile

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PROOF OF SERVICE

A copy of the foregoing *Reply Brief* was sent by electronic mail to Anu Sharma, Attorney for Appellee at sharmaa@mcohio.org, on this 12th day of February, 2023.

/s Gregory S. Costabile

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