IN THE SUPREME COURT OF OHIO

CASE NO. _____

GREGORY J. FACEMYER,
Plaintiff-Appellant,

-vs-

KRISTEN K. PATCH,
Defendant-Appellee.

ON APPEAL FROM THE SEVENTH APPELLATE DISTRICT
MAHONING COUNTY, OHIO
CASE NO. 2022 MA 00138

MEMORANDUM IN SUPPORT OF JURISDICTION OF PLAINTIFF-APPELLANT, GREGORY J. FACEMYER

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STATEMENT OF CONSTITUTIONAL ISSUES OF PUBLIC AND GREAT GENERAL INTEREST

This Court should accept jurisdiction to consider whether an appellate court may presume that a domestic relations court's final order on a subset of pending post-decree motions implicitly denies all other pending post-decree motions, even those covering aspects of the dispute for which the court has never taken evidence or argument. Domestic-relations matters proceeding under a domestic relations court's continuing jurisdiction are intended to be litigated piecemeal as the circumstances between parties change. *Fradette v. Gold*, 8th Dist. Cuyahoga No. 107003, 2018-Ohio-2744, ¶ 9; *see Fradette v. Gold*, 157 Ohio St.3d 13, 2019-Ohio-1959, 131 N.E.3d 12, ¶ 8. In post-decree domestic-relations proceedings, an order resolving some issues cannot resolve all other pending motions, including those for which the parties have not been heard, as it could in any other civil matter. But that is precisely what the lower appellate court said happened when it dismissed this appeal below, ruling that pending post-decree motions to modify child support and for sanctions were implicitly denied when the domestic relations court issued a final order on entirely distinct post-decree topics.

The Seventh Judicial District's application of the implied-denial principle will sow chaos across the State's domestic relations court system. Parties will be forced to raise every pending request for relief during any hearing that could result in an appealable order, lest they apparently forfeit any opportunity to pursue those matters. Any attempt by a domestic relations court to limit the topics that will be addressed at a hearing, the outcome of which could render an implied denial of motions not yet addressed, will result in a denial of the fundamental due process right to have an "opportunity to set forth evidence" and to have a court "examine the evidence before reaching a decision." *Ashland*

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Cty. Heartland Home v. Croskey, 160 Ohio App.3d 170, 2005-Ohio-1476, 826 N.E.2d 365, ¶ 11 (5th Dist.). These parties will also be compelled to appeal every post-decree domestic relations order to avoid losing their rights to pursue relief on their other pending post-decree motions. And it is anyone's guess how a court of appeals will review disputed issues for which the trial court never accepted evidence, heard argument, or ruled. To avoid these consequences, this Court should accept jurisdiction over this appeal.

STATEMENT OF CASE AND FACTS

A. The Parties Divorce, and a February 2019 Magistrate's Decision Resolves Numerous Post-Decree Motions

Plaintiff-Appellant, Gregory J. Facemyer ("Dr. Facemyer"), and Defendant-Appellee, Kristin K. Patch ("Patch"), divorced in 2013. Between 2016 and 2018, the parties filed numerous post-decree motions. *Transcript of Docket Entries Volume II filed September 30, 2019, in Facemyer v. Patch, 7th Dist. Mahoning No. 2019 MA 00109 ("T.d. Vol. II") 457, Judgment Entry filed September 5, 2019, pp. 1-2.* The magistrate held a trial over 27 non-consecutive days to resolve fifteen specifically identified motions. *Id.* On February 12, 2019, the magistrate issued his decision and resolved all fifteen post-decree motions. *Id., p. 1.* Both parties filed objections to the magistrate's February 12, 2019 decision. *T.d. Vol. II 424, Plaintiff Facemyer's Objections to Magistrate's Decision filed February 25, 2019 ("Pltf. Obj."); T.d. Vol. II 430, Defendant Patch's Objections to Magistrate's Decision filed March 6, 2019 ("Def. Obj.").*

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B. Dr. Facemyer Moves to Modify Child Support and for Other Relief While Objections to the Magistrate's February 2019 Decision Are Pending

While the objections to the magistrate's decision were pending, both parties filed new motions based on new circumstances that arose after trial. As relevant to this appeal,

Dr. Facemyer filed six motions (the "2019 Motions") after the parties submitted objections to the magistrate's decision but before the trial court's ruling on those objections. Most significantly, on May 23, 2019, Dr. Facemyer filed a motion to modify child support. *T.d. Vol. II 433* ("*May 2019 Mtn. Modify Child Support"), pp. 1-2.* His motion was based on the significant changes to Ohio's child support statutes that came into effect after the trial and the last order of child support, which entitled him to a reduced obligation. *Id., p. 1.* And his annual income had substantially decreased. *Id.* Between May and September 2019, Dr. Facemyer also filed four motions to show cause and a motion to share the costs of a 3,000-page transcript. *T.d. Vol. II 432, May 23, 2019 Mtn Share Transcript Cost; T.d. Vol. II 434, May 23, 2019 Mtn. Contempt; T.d. Vol. II 443, July 1, 2019 Amended Mtn. Contempt; T.d. Vol. II 453, Aug. 14, 2019 Amended Mtn. Contempt; T.d. Vol. II 459, Sept. 11, 2019 Mtn. Contempt.* All of the 2019 Motions, which are the subject of this appeal, were filed *after* the February 12, 2019 magistrate's decision, *after* each party filed their objections to that decision, and were based on facts that had arisen *after* the trial before the magistrate. *See Pltf. Obj.; Def. Obj.*

C. The Trial Court Continues All Hearings on the 2019 Motions Pending the Outcome of the First Appeal

On September 5, 2019, the trial court overruled both parties' objections to the February 12, 2019 magistrate decision. *T.d. Vol. II 457, Judgment Entry filed September 5, 2019, p. 1.* The parties both appealed the September 5, 2019 Judgment Entry ("first appeal"). *Facemyer v. Facemyer*, 7th Dist. Mahoning No. 2019 MA 109, 2021-Ohio-48, ¶ 1-4. As the pandemic created barriers to litigation, Defendant Patch filed a written request for the trial court to proceed on the 2019 Motions pending the outcome of the first appeal, specifically arguing that the domestic relations court retained continuing

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jurisdiction to hear new matters. *T.d. Vol. III 471, Memorandum filed July 28, 2020, pp. 1-2.* But the magistrate held the 2019 Motions in abeyance as the first appeal proceeded to avoid "inconsistent results." *See Transcript of Docket Entries filed February 1, 2023 ("T.d. Vol. III") 473, Magistrate's Order filed September 11, 2020.*

In January 2021, the Seventh District released its opinion in the first appeal and affirmed the trial court's September 5, 2019 Judgment Entry in its entirety. *Facemyer*, 2021-Ohio-48, at ¶ 1, 47. The trial court then held a status hearing "on the parties' pending motions." *T.d. Vol. III 480, Order filed May 21, 2021.* In an Order filed May 21, 2021, the trial court's magistrate acknowledged that the pending motions that were still "required to be addressed" included the six motions that Dr. Facemyer filed between May and September 2019. *Id., p. 1.* The magistrate also went on to schedule hearings for all pending motions for dates in May, September, and October of 2021, including the 2019 Motions. *Id., p. 2.* Defendant Patch did not file to set aside this order. Instead, she issued multiple discovery requests pertaining to the 2019 Motions.

After the first of these hearings, which did not involve any of the six motions subject to this appeal, the trial court issued an order acknowledging that Dr. Facemyer "has a pending motion to reduce his child support obligation." *T.d. Vol. III 490, Order filed July 28, 2021, p. 2.* The order also rescheduled the hearing on the pending child-support motion to December 2021. *Id., pp. 3-4.* Defendant Patch did not file to set aside this magistrate's order or complain of the scheduling of the 2019 Motions for hearing.

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D. The Trial Court Again Delays the Hearings on the 2019 Motions to Resolve Disqualification of Defendant Patch's Counsel

In September 2021, Dr. Facemyer filed a motion to disqualify Defendant Patch's counsel, Attorneys Louis Katz and Matthew Giannini. *T.d. Vol. III 512, Motion to*

Disqualify Opposing Counsel filed September 8, 2021 ("Mtn. Disqualify"). After determining that the disqualification issue needed "to be heard" before the 2019 Motions, the magistrate determined that Attorney Katz should be disqualified because he had "crossed a line" that significant. *T.d. Vol. III 540, Magistrate's Decision filed November 17, 2021 ("Magistrate's Disq. Order"), pp. 1-2, 11.* Defendant Patch objected to the disqualification, which the trial court sustained, thus denying Dr. Facemyer's motion to disqualify in February 2022. *T.d. Vol. III 562, Judgment Entry filed February 18, 2022.*

E. The Trial Court Dismisses Dr. Facemyer's 2019 Motions Without a Hearing

On October 18, 2022, more than three years after Dr. Facemyer filed his 2019 Motions, and after numerous court appearances occurred and scheduling orders regarding these Motions were issued without objection, Defendant Patch filed a request to dismiss all motions filed before September 5, 2019. *T.d. Vol. III 612, Defendant's Motion to Dismiss filed October 18, 2022.* She argued for the first time—contrary to her earlier position that the court possessed continuing jurisdiction over these matters—that every motion still pending when the trial court adopted the magistrate's decision on September 5, 2019, somehow merged into that September 5 Judgment Entry. *Id., pp. 1-2.* Dr. Facemyer opposed dismissal, pointing out that the 2019 Motions were filed *after* the magistrate's February 2019 decision, were "based on facts and circumstances that had arisen after the close of evidence," and could not have merged into the September 5 Judgment Entry adopting the magistrate's February 2019 decision. *T.d. Vol. III 621, Brief in Opposition to Motion to Dismiss filed November 1, 2022, p. 2.*

In November 2022, a judge new to the case, Judge Joseph Giulitto, held a hearing on Defendant Patch's Motion to Dismiss during which both sides presented oral

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argument. *Transcript of November 10, 2022 Motion Hearing filed December 5, 2022.* On November 28, 2022, the court issued an entry *dismissing* "all motions pending on September 5, 2019" that were not addressed in that Judgment Entry. *T.d. Vol. III 625, Judgment Entry filed November 28, 2022, p. 2.* Oddly, the court *also* claimed that these requests for relief had already been denied when the September 5, 2019 ruling was issued years before: "Regarding Defendant's motion to dismiss, the law is clear that when a trial court enters a final Judgment Entry then any pending motion not addressed in the final Judgment Entry is deemed as being denied." *Id.* By that time, no hearings had ever been held on the merits of the 2019 Motions.

On December 2, 2022, Plaintiff Facemyer filed a motion under Civ.R. 52 for findings of fact and conclusions of law with respect to the November 28, 2022 Entry. *T.d. Vol. III 631.* On December 9, 2022, the trial court rebuffed his request:

> This Court is not going to review this Court's entire file to determine how many motions were pending before this Court issued its Judgment Entry of September 5, 2019. If there were motions pending which were not addressed, but should have been, each party had the opportunity to raise that issue on appeal. Neither party raised that issue in their respective elaborate appeal. It must be therefore assumed that all parties were satisfied that the Court had addressed all motions.
>
> If, however, all motions were not addressed in the appealed order and should have been, the law is clear, that by not addressing these motions it is assumed that they are denied and merged in the appealed order.

T.d. Vol. III 640, Judgment Entry filed December 9, 2022, pp. 3-4.

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F. Both Parties Appeal to the Seventh Judicial District

On December 28, 2022, Dr. Facemyer appealed to the Seventh Judicial District from the November 28 and December 9, 2022 Entries. *T.d. Vol. III 656.* On January 3, 2023, Defendant Patch initiated her own cross-appeal, attaching only an unrelated

Judgment Entry issued September 30, 2022, which denied requests to dismiss certain motions for failure to "properly obtain service." *T.d. Vol. III 659, Notice of Cross-Appeal filed January 3, 2022; see T.d. Vol. III 603, Judgment Entry filed September 30, 2022.* Both parties moved to dismiss the other's appeal for lack of a final appealable order. *Defendant Patch's Motion to Dismiss filed January 17, 2023; Plaintiff-Appellant's Motion to Dismiss Defendant-Appellee's Cross-Appeal filed January 26, 2023.* Dr. Facemyer opposed to Patch's Motion to Dismiss on January 26, 2023. But Patch never opposed Dr. Facemyer's motion to dismiss the cross-appeal.

After Dr. Facemyer submitted a brief, the Seventh District dismissed the appeal for either lack of a final appealable order or untimeliness. *Judgment Entry filed April 5, 2023 ("Dismissal Entry"), attached at Apx. 0001-3.* The court held that the trial court's September 5, 2019 Judgment Entry resolving the 15 post-decree motions filed between 2016 and 2018 had implicitly denied the later-filed 2019 Motions. *Apx. 0002.* According to the Seventh District, the parties should have challenged the issues in the 2019 Motions in the appeal of the September 5, 2019 Judgment Entry, even though the domestic relations court had continued to schedule those Motions for hearings. *Id.*

Dr. Facemyer filed an Application for Partial Reconsideration and a Motion to Certify a Conflict on April 17, 2023. He argued that the Seventh District could not have fully considered the implicit-denial issue because the parties had not raised it, and the dismissal was an obvious error because post-decree domestic-relations matters are litigated piecemeal as circumstances change under the court's continuing jurisdiction. *Reconsideration Application filed April 17, 2023, pp. 1, 3.* He noted that if the domestic relations court had indeed implicitly denied the 2019 Motions in September 2019, there would have been no reason to grant Patch's motion to dismiss them in 2022. *Id.*

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Dr. Facemyer further pointed out that the 2019 Motions could not have been subsumed within the September 5, 2019 Judgment Entry, which merely ruled upon objections to a magistrate's decision after a trial, because the 2019 Motions were not filed until *after* the magistrate's trial and decision and *after* both parties filed objections to that decision. *Id., p. 4.* In his Motion to Certify a Conflict, Dr. Facemyer noted a conflict with *Branden v. Branden*, 8th Dist. Cuyahoga No. 108802, 2020-Ohio-4134. *Motion to Certify Conflict filed April 17, 2023, pp. 2-3.* In *Branden*, the Eighth District Court of Appeals held that a final judgment entry on one post-decree motion was "independent" of another pending post-decree motion, so there was "no basis to presume that [the pending independent post-decree motion] was impliedly denied." *Branden* at ¶ 15.

On April 24, 2023, the Seventh District issued a Judgment Entry denying Dr. Facemyer's Reconsideration Application and Motion to Certify a Conflict. *Apx. 0004-6.* The Seventh District doubled down on the implicit-denial rule while also conjecturing that the issue of child support modification retroactive to May 23, 2019, "had been rendered moot" due to "a renewed motion" filed in December 2022—notably failing to recognize that a modification retroactive to May 2019 was impossible upon a motion filed years later. *Apx. 0005; see Manley v. Manley*, 7th Dist. Columbiana No. 19 CO 0023, 2020-Ohio-1365, ¶ 18 ("these statutes prohibit the modification of a court support order to retroactively extend back to a date before the obligor made the petition to modify").

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Dr. Facemyer now seeks further review before this Court.

ARGUMENT

This appeal presents issues of public and great general interest and a substantial constitutional question. *Article IV, Section 2(B)(2)(a)(ii) and (B)(2)(e) of the Ohio Constitution; S.Ct.Prac.R. 5.02(A)(1) and (A)(3).* One Proposition of Law is presented:

PROPOSITION OF LAW: WHEN A DOMESTIC RELATIONS COURT POSSESSING CONTINUING JURISDICTION RULES ON A POST-DIVORCE-DECREE MOTION, AN APPELLATE COURT CANNOT PRESUME THAT THE ORDER IMPLICITLY DENIED ALL OTHER LATER-FILED POST-DECREE MOTIONS SEEKING DISTINCT RELIEF

This Court should consider whether appellate courts may presume that an appealable ruling on a post-decree motion implicitly denies all other pending post-decree motions seeking other relief. Of course, "the court in which a decree of divorce is originally rendered retains continuing jurisdiction over matters relating to the custody, care, and support of the minor children of the parties." *Hartman v. Hartman*, 8th Dist. Cuyahoga No. 107251, 2019-Ohio-1637, ¶ 20. While objections to the magistrate's trial ruling remained pending before the court that issued the divorce decree, Dr. Facemyer filed his 2019 Motions and triggered the trial court's continuing jurisdiction over these new requests for relief. *Id.* The Seventh District's presumption that the domestic relations court's September 5, 2019 Judgment Entry implicitly denied the 2019 Motions runs counter to the principle of continuing jurisdiction in post-decree cases and violates movants' constitutional right to due process of law. This Court should intervene to prevent this precedent from taking hold, as the implicit denial rule will curtail the statutory jurisdiction of Ohio's domestic relations courts and thwart due process.

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A. The Implicit-Denial Rule Is Inconsistent with the Piecemeal-Nature of Post-Decree Proceedings

Post-decree cases are unique in that a final order on one post-decree motion does not terminate the domestic relations court's continuing jurisdiction to consider other post-decree filings under Civ.R. 75. *Branden*, 2020-Ohio-4134, at ¶ 15. It should be presumed that post-decree matters within the domestic relations court's continuing

jurisdiction must be ruled upon separately, as the decree that would have initially settled all matters between the parties has usually been issued years before. *See Id.* In post-decree proceedings, an order resolving some issues does not necessarily resolve all pending motions as a final judgment in a typical civil case would. *See, e.g., JP Morgan Chase Bank v. Wiram*, 2d Dist. Clark No. 2013 CA 3, 2013-Ohio-2232, ¶ 13 (foreclosure); *Miller v. Pollock*, 5th Dist. Richland No. 2009 CA 0096, 2010-Ohio-1335, ¶ 46, fn. 1 (automobile collision). The trial court did not finally and conclusively settle all disputes between the parties on September 5, 2019, and it was completely inconsistent with the rule of continuing jurisdiction for the lower courts to treat it as if it had.

As is typical in these cases, Dr. Facemyer's motion to modify his child-support obligations and the other 2019 Motions were separate from the particular issues encompassed in the September 5, 2019 Judgment Entry and subsequent appeal. *See, e.g., Jefferson Capital Sys., L.L.C. v. Gibson,* 8th Dist. Cuyahoga No. 108384, 2019-Ohio-4793, ¶ 18 (holding that entry dismissing civil case did not impliedly deny "ancillary and independent" motion for sanctions). The September 5, 2019 Judgment Entry, which was the sole subject of the prior appeal before the Seventh District, merely ruled upon objections to a magistrate's decision after a trial. *T.d. Vol. II 457, Judgment Entry filed September 5, 2019, p. 1.* The six 2019 Motions that Dr. Facemyer has sought to pursue in this appeal were not within the scope of the magistrate's 27-day trial and decision or the trial court's adoption of that decision. *See Id.* Dr. Facemyer filed the Motions in May 2019, July 2019, August 2019, and September 2019—*after* the magistrate's February 2019 decision had been submitted to the trial court on objections. *Compare T.d. Vol. II 432, May 23, 2019 Mtn. Transcript Costs; T.d. Vol. II 433, May 2019 Mtn. Modify Child Support; T.d. Vol. II 434, May 23, 2019 Mtn. Contempt; T.d. Vol. II 443, July 1, 2019*

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Amended Mtn. Contempt; T.d. Vol. II 453, Aug. 14, 2019 Amended Mtn. Contempt; T.d. Vol. II 459, Sept. 11, 2019 Mtn. Contempt with T.d. Vol. II 424, Pltf. Obj.; T.d. Vol. II 430, Def. Obj. In particular, Dr. Facemyer's request for a modification of child support in May 2019 raised changes in the law and his personal circumstances occurring long after the trial held before the magistrate. *T.d. Vol. II 433, May 2019 Mtn. Modify Child Support.*

There is no conceivable way for a magistrate to hold a trial on motions that would not be filed until after the trial, nor could objections to a magistrate's rulings after trial be "specific and state with particularity all grounds for objection" to a ruling that had never been entered. *Civ.R. 53(D)(3)(b)(ii).* For the same reason, neither party could have raised the issues "in their respective elaborate appeal[s]" as the trial court chided. *T.d. Vol. III 640, Judgment Entry filed December 9, 2022, pp. 3-4.* And for three years, the trial court and all parties continued to acknowledge that the 2019 Motions were still pending—activities fully consistent with the domestic relations court's continuing jurisdiction. *See, e.g., T.d. Vol. III 473, Magistrate's Order filed September 11, 2020*; *T.d. Vol. III 480, Order filed May 21, 2021*; *T.d. Vol. III 490, Order filed July 28, 2021, p. 2; T.d. Vol. III 540, Magistrate's Decision filed November 17, 2021, pp. 1-2.* Indeed, the 2019 Motions were explicitly held in abeyance while the Seventh District considered the first appeal. *See T.d. Vol. III 473, Magistrate's Order filed September 11, 2020.* So, at least until a new trial court judge took over the docket, the domestic relations court fully understood that the 2019 Motions were separate from the magistrate's February 2019 decision, trial court's adoption of that decision in its September 5, 2019 Judgment Entry, and the earlier Seventh District appeal. *T.d. Vol. III 625, Judgment Entry filed November 28, 2022.* This case perfectly illustrates how implausible and troubling the presumption of implicit denial can be in post-decree cases.

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B. Presuming Implicit-Denial in Post-Decree Proceedings Violates Litigants' Due Process Rights

1. The Constitutional Guarantees of a Meaningful Opportunity to Be Heard

The Due Process Clause of the Fourteenth Amendment to the United States Constitution declares that a state shall not "deprive any person of life, liberty, or property, without due process of law." The United States Supreme Court has expressed that "due process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481, 92 S.Ct. 2593, 33 L.Ed.2d 484 (1972). Undergirding the modern standard of procedural due process is the "fundamental requirement" that prior to any deprivation of life, liberty, or property, an individual must be provided with an "opportunity to be heard 'at a meaningful time and in a meaningful manner.' " *Matthews v. Eldridge*, 424 U.S. 319, 332-333, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965). After determining that some process is due, the question becomes what process is due:

> [O]ur prior decisions indicate that identification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Matthews, 424 U.S. at 334-335, 96 S.Ct. 893, 47 L.Ed.2d 18. At base, the "role of the judiciary is limited to determining whether the procedures meet the essential standard of fairness under the Due Process Clause." *Landon v. Plasencia*, 459 U.S. 21, 34-35, 103

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S.Ct. 321, 74 L.Ed.2d 21 (1982).

Article I, Section 16 of the Ohio Constitution guarantees that in this state, "every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law[.]" Ohio's Due Course of Law Clause may provide greater procedural protection than the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, ¶ 23-24; *see also Stanton v. State Tax Comm.*, 114 Ohio St. 658, 669-671, 151 N.E. 760 (1926) ("Section 16 of the Ohio Bill of Rights * * * is much broader than the due process clause of the Fourteenth Federal Amendment"). Nevertheless, this Court has "generally recognized" that this provision of the state Constitution is "the equivalent of the Due Process Clause in the United States Constitution." *Simpkins v. Grace Brethren Church of Delaware, Ohio*, 149 Ohio St.3d 307, 2016-Ohio-8118, 75 N.E.3d 122, ¶ 34; *In re Adoption of H.N.R.*, 145 Ohio St.3d 144, 2015-Ohio-5476, 47 N.E.3d 803, ¶ 24; *see also State v. Cowan*, 103 Ohio St.3d 144, 2004-Ohio-4777, 814 N.E.2d 846, ¶ 8. The Court has borrowed the three-factor analysis from *Mathews* for the purpose of "[d]etermining whether a particular procedure is constitutionally adequate[.]" *H.N.R.* at ¶ 25.

A number of procedural guarantees fall within the right to due process. This Court has generally explained with respect to the fair trial process that:

> Due process of law implies, in its most comprehensive sense, the right of the person affected thereby to be present before the tribunal which pronounces judgment upon a question of life, liberty or property, to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, such is not due process of law. (Emphasis added.)

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Williams v. Dollison, 62 Ohio St.2d 297, 299, 405 N.E.2d 714 (1980). Due process thus guarantees to a party "the opportunity to set forth evidence," and a "trial court must examine the evidence before reaching a decision." *Ashland Cty. Heartland*, 160 Ohio App.3d 170, 2005-Ohio-1476, 826 N.E.2d 365, at ¶ 11.

2. The Implicit-Denial Rule Deprives Post-Decree Parties the Opportunity to Be Heard

Any presumption that a domestic relations court's final order on one post-decree motion implicitly denies pending post-decree motions seeking other relief would violate those movants' right to be heard. A trial court that issues an order on post-decree motions without a hearing to allow the movant "to debate their merits before the final order was entered" violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 16, of the Ohio Constitution. *E.g., Hartman*, 2019-Ohio-1637, at ¶ 23, 26 (reversing and remanding trial court's order post-divorce decree where the record reflected no hearing before the trial court entered order). In the child-support context, "due process requires an adjudicatory hearing on a motion for child support in a post-decree proceeding," and the parties are owed "an opportunity to produce evidence of their choosing." *Scott v. Scott*, 12th Dist. Clinton No. CA91-05-009, 1991 WL 278246, *3 (Dec. 30, 1991).

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Here, like the application of the implicit-denial rule in any post-decree context, the trial court violated Dr. Facemyer's due process rights by either implicitly denying his 2019 Motions or ordering them dismissed without an opportunity to be heard. As discussed above, the 2019 Motions were not subsumed within the magistrate's 27-day trial, February 2019 decision, or subsequent appeal from the trial court's adoption of that decision. Dr. Facemyer filed the Motions in May 2019, July 2019, August 2019, and

September 2019—*after* the magistrate's February 2019 decision and *after* both parties filed objections to that decision in February and March 2019. *Compare May 2019 Mtn. Modify Child Support; T.d. Vol. II 432, May 23, 2019 Mtn. Transcript Costs; T.d. Vol. II 434, May 23, 2019 Mtn. Contempt; T.d. Vol. II 443, July 1, 2019 Amended Mtn. Contempt; T.d. Vol. II 453, Aug. 14, 2019 Amended Mtn. Contempt; T.d. Vol. II 459, Sept. 11, 2019 Mtn. Contempt with Pltf. Obj.; Def. Obj.* The trial court never gave Dr. Facemyer an opportunity to present evidence or argument in support of the 2019 Motions. As such, application of the implicit-denial rule also violated his constitutional right to due process. This court should therefore accept jurisdiction over this appeal and correct the Seventh District's unworkable application of the implicit-denial rule in post-decree cases.

CONCLUSION

For the foregoing reasons, this Court should accept jurisdiction over this appeal and resolve the issues of public and great general importance and substantial constitutional question raised by the Seventh District's troubling new precedent.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing **Memorandum** was served by e-mail on June 8, 2023, upon:

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