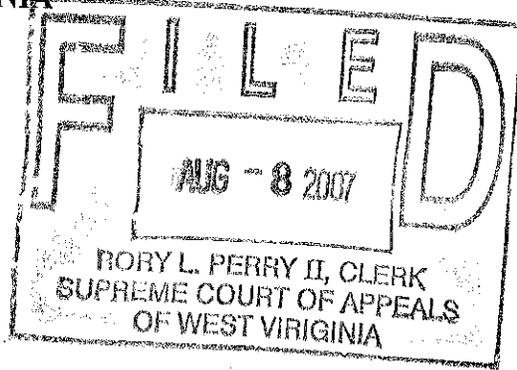


BEFORE THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA



IN RE THE MARRIAGE OF:

KATHLEEN R. ROSEN

Appellant,

vs.

DAVID A. ROSEN,

Appellee.

*
*
*
*
*
*
*
*
*
*

APPEAL NO. 33437

REPLY BRIEF
OF APPELLANT, KATHLEEN R. ROSEN

Ward D. Stone, Jr., Esquire
West Virginia Bar I.D. No. 3626
Edward L. Harman, Jr., Esquire
West Virginia Bar I.D. No. 7169
SPILMAN THOMAS & BATTLE, PLLC
150 Clay Street, Second Floor
Morgantown, WV 26501
(304) 291-7920

Counsel for Appellant

August 7, 2007

TABLE OF CONTENTS

	<u>Page</u>
I. POINTS AND AUTHORITIES RELIED UPON	3
II. STATEMENT OF FACTS	4
III. SUMMARY OF THE LAW AND ARGUMENT	5
IV. ARGUMENT	6
A. FULL FAITH AND CREDIT	6
B. MOST CONVENIENT FORUM	9
C. COMMUNICATION BETWEEN THE COURTS	14
D. WAIVER OF RIGHTS UNDER THE UCCJEA	15
V. RELIEF PRAYED FOR	16

POINTS AND AUTHORITIES RELIED UPON

CASES

<u>Barth v. Barth</u> , 113 Ohio St.3d 27 (2007)	8
<u>Campbell v. Campbell</u> , 194 W.Va. 334, 460 S.E.2d 469 (1995)	10
<u>Clifford K. v. Paul S.</u> , 217 W.Va. 625, 619 S.E.2d 138 (2005)	10
<u>Estate of Cook v. Cook</u> , 199 W.Va. 309, 484 S.E.2d 1197 (1997)	6
<u>Gaines v. Preterm Cleveland, Inc.</u> , 33 Ohio St.3d 54 (1987)	8
<u>Harless v. Sprague</u> , unreported Case No. 23546 (Summit County, June 27, 2007)	15
<u>Kelm v. Kelm</u> , 92 Ohio St.3d 223 (2001)	15
<u>Linn v. Rotor Rooter, Inc.</u> , unreported Case No. 82657 (Cuyahoga County, May 24, 2004)	8
<u>Mark-It Place, Inc. v. New Plan Excel Realty Trust, Inc.</u> , 156 Ohio App.3d 65 (2004)	15
<u>National City Bank v. Rini</u> , 162 Ohio App.3d 662 (2005)	15
<u>Pratts v. Hurley</u> , 102 Ohio St.3d 81 (2004)	6
<u>State ex rel. Sautter v. Grey</u> , unreported Case No. 06-CA-6 (Morrow County, April 18, 2007) ..	6
<u>State ex rel. Stacy v. Batavia School District Board of Education</u> , 97 Ohio St.3d 269 (2002)	15

STATUTES and RULES

Ohio Rules of Civil Procedure, CIV. R. 75 (N)(2)	13
Ohio Rev. C §3105.03	7
Ohio Civ. R. 3 (B)(9).....	7
W.Va. Code §48-9-206(a)	9
W.Va. Code §48-20-201	9
W.Va. Code §48-201(a)(2)	5, 9
W.Va. Code §48-20-207	5, 9
W.Va. Code §48-20-208	8

STATEMENT OF THE FACTS

There has never been a full evidentiary record made in this case. The only evidence concerning the issue as to whether West Virginia or Ohio should have jurisdiction over the parties concerning the issue of child custody involving their three (3) infant children occurred at a hearing before the Family Court of Monongalia County, West Virginia, on May 26, 2006. At that hearing, counsel for both parties proffered testimony concerning the period of time that the parties resided in West Virginia from May, 1992, until December 1, 2005, and the move of Appellant and her three (3) children to Ohio upon her acceptance of a position with the Mt. Sinai Skills and Simulation Center of the Case Western Reserve School of Medicine in Cleveland, Ohio from December 1, 2005, through May 26, 2006.

The Statement of Facts contained in Appellant's Brief is a summary of her proffered testimony by the Appellant's attorney. The Statement of Facts contained in Appellee's Brief is a summary of his proffered testimony by Appellee's attorney. However, there are certain facts contained in Appellee's Brief that not only were not proffered at this hearing, but are not correct.

After the parties' twins were born on February 8, 1994, Appellant did not work outside the home at all for a number of years. Appellant proffered that she was the primary caregiver. Appellee proffered that he was the primary caregiver even though he worked fulltime and was gone long hours. Appellant slowly integrated back into the work force, not returning to full-time employment until July, 2004. The primary reason that Appellant sought employment away from Morgantown, West Virginia, was because both parties believed that she would have to assume the role as the primary financial provider for the family as Appellee's illness would become progressively worse.¹ Appellant was not hired in her present position until August, 2005. She

¹Appellee suffers from Post Polio Syndrome which will progressively worsen.

signed a contract to purchase the home in Beechwood, Ohio, on or about September 15, 2006.² Appellant never led Appellee to believe that she was moving without the children. Even after Appellant and the children moved to Ohio, she believed that Appellee would be joining them until March, 2006, when Appellee informed her that he would not be moving to Ohio.

After hearing the proffered testimony of the attorneys for both parties, the Family Law Judge of Monongalia County, West Virginia, made the following finding in his Order dated August 9, 2006, in which he took jurisdiction of the child custody issue:

There is some dispute about the specific facts surrounding the mother's move to Ohio and its significance to the marriage, but it does appear to this Court that the father was at least aware of the move, and to some extent, acquiesced to it if not assisted in it.³

SUMMARY OF THE LAW AND ARGUMENT

B. SUMMARY OF ARGUMENT AND UCCJEA

In Appellee's summary of his argument under the UCCJEA, he appears to claim that the home state "trumps all other claims for jurisdiction" unless the child has been abandoned or there is an emergency situation involving the health and safety of the child. The limitations under the UCCJEA are not that severe.

Under the UCCJEA, the home state may relinquish the custody issue if it determines that another jurisdiction is a more convenient forum under the factors contained in West Virginia Code §48-20-207.⁴

² The home that Appellant purchased could have been adapted to make it handicap accessible to meet Appellee's need for a handicap-accessible home.

³ In order to make an exact determination of the proffered facts, one would have to listen to the tape of the hearing of May 26, 2006, concerning the proffered testimony made by Appellee's counsel since neither party testified concerning any of the facts contained in Appellee's Brief, and there is no record made of that hearing.

⁴ W.Va. Code §48-20-201(a)(2).

ARGUMENT

A. **FULL FAITH AND CREDIT**

Appellee contends that the judgment from the Domestic Relations Court of Cuyahoga County, Ohio, dated June 6, 2006, should not be given full faith and credit because Ohio clearly lacked jurisdiction and the judgment was obtained by fraud.

1. **Lack of Jurisdiction**

Jurisdiction for full faith and credit purposes is to be determined by the law of the state rendering the judgment. Estate of Cook v. Cook, 199 W. Va. 309, 484 S.E.2d 1197 (1997).

On July 24, 2007, the Court of Appeals for Cuyahoga County, Ohio issued a decision dismissing Appellee's Complaint for a Writ of Prohibition, a copy of which is attached to this Reply Brief and identified as Exhibit 1. The appellate court based its decision on two grounds: 1) Judge Celebrezze had jurisdiction to determine whether he had jurisdiction over the parties' child custody dispute and 2) an appeal was an adequate remedy at law.

On pages 12-14 of Appellant's original Brief to this Court, she distinguished the concept between the lack of subject-matter jurisdiction and the wrongful exercise of jurisdiction under Ohio law. If a court acts without subject-matter jurisdiction, any judgment rendered is void. If a court wrongfully exercises jurisdiction in a particular case, its judgment is voidable, subject only to a direct appeal. Pratts v. Hurley, 102 Ohio St.3d 81 (2004). When it is apparent that the matter alleged is within the class of cases in which a particular court has been empowered to act, subject-matter jurisdiction is present. Any subsequent error is only error in exercising jurisdiction as distinguished from a want of jurisdiction in the first instance. State ex rel. Sautter v. Grey, unreported, Case No. 06-CA-6 (Morrow County, April 18, 2007).

Appellee admits on page 20 of his Brief that Judge Celebrezze has subject-matter jurisdiction to hear child custody cases in general, but the UCCJEA is a restraint on his exercise of jurisdiction. The fact that the Ohio appellate court held that an appeal would be an adequate remedy supports the conclusion that Judge Celebrezze had general subject-matter jurisdiction to determine whether he had jurisdiction over the child custody issue under Ohio law. Consequently, his June 6, 2006, Judgment Entry should be given full faith and credit by the West Virginia courts.

2. **Fraud**

Appellee bases his fraud argument upon the fact that the Designation Sheet that was filed with the Complaint for Legal Separation, Spousal Support, Child Support, Attorneys Fees, Allocation of Parental Rights and Responsibilities, Restraining Orders, and Further Legal and Equitable Relief, Case No. DR-06-309951, on April 6, 2006, stated that Appellant had been a resident of Cuyahoga County for more than ninety (90) days and the State of Ohio for more than six (6) months.

In Ohio, Appellant only had to be a resident for ninety (90) days to have jurisdiction to file the Complaint for Legal Separation, Spousal Support, Child Support, Attorneys Fees, Allocation of Parental Rights and Responsibilities, Restraining Orders, and Further Legal and Equitable Relief, Case No. DR-06-309951.⁵ Appellant had met that requirement, having moved to Beechwood, Ohio, on December 1, 2005. The six (6) months plus box was inadvertently also checked. It should not have been, and was not done to commit any fraud upon the Court. On

⁵ Ohio Rev. C. §3105.03 states that a complaint for legal separation shall be filed in the proper county for commencement of an action pursuant to the Ohio Civil Rules, which is ninety (90) days immediately prior to filing of the complaint. See Ohio Civ. R. 3(B)(9).

June 12, 2006, after Appellant had resided in Ohio for more than six (6) months, she amended her Complaint for Legal Separation to a Complaint for Divorce.⁶

The Ohio Court had jurisdiction when the original Complaint for Legal Separation was filed. There was no intent to deceive the Court or to obtain jurisdiction for a divorce prior to when Appellant had been a resident for six (6) months. Therefore, the Ohio Court has always had jurisdiction, and there was no fraud committed by Appellant.

In addition, a showing of fraud under Ohio law requires reliance on a misrepresentation resulting in damages. See Linn v. Rotor-Rooter, Inc., unreported, Case No. 82657 (Cuyahoga County, May 20, 2004), citing Gaines v. Preterm Cleveland, Inc., 33 Ohio St.3d 54, 55 (1987). Judge Celebrezze's June 6, 2006 Judgment Entry was not based upon Appellant's residing in Ohio for more than six (6) months. Rather, it was based upon Appellee's waiver of the UCCJEA's provisions and that West Virginia was an inconvenient forum. Therefore, Appellee has failed to show that Judge Celebrezze's June 6, 2007, Judgment Entry was fraudulently procured.

Finally, Appellee alleges on page 18 of his Brief that the Ohio court "... sacrificed proper procedure in exchange for expeditious adjudication failing to serve the best interest of anyone but the Appellant." However, Judge Celebrezze's June 6, 2006, Judgment Entry specifically states that his findings were based upon affidavits and evidence submitted by the parties.

Appellee attempts to invoke West Virginia Code §48-20-208 involving unjustifiable conduct of Appellant. The unjustifiable conduct, as referred to in that section, primarily pertains to when one parent flees the state with the children to obtain a more favorable forum which prevents the other parent from having meaningful parenting time with the children. There are no allegations that Appellant fled the State of West Virginia to obtain a more favorable forum in

⁶ Ohio Rev. C. §3105.03 requires that Appellant be a resident of Ohio for six (6) months prior to filing a divorce complaint. See Barth v. Barth, 113 Ohio St.3d 27 (2007).

Ohio. She applied for three (3) jobs in different locations, and moved to Ohio only because of the job offer at Mt. Sinai Skills and Simulation Center at Case Western Reserve School of Medicine. At the time she moved, she honestly believed that Appellee would be joining her and the children the following year. She had no expectation of obtaining a divorce from Appellee or which forum would be more favorable to her at the time she moved.

B. OHIO IS THE MORE CONVENIENT FORUM UNDER THE UCCJEA.

Appellee cites West Virginia Code §48-20-201 claiming that West Virginia, as the home state of the children, had exclusive jurisdiction to hear the child custody issues. Under West Virginia Code §48-20-201(a)(2), the statute clearly provides that the court of the home state of the child, West Virginia, can decline to exercise jurisdiction on the grounds that Ohio is a more convenient forum under the factors set forth in West Virginia Code §48-20-207.

Appellant has reviewed all the factors contained in West Virginia Code §48-20-207 in her original Brief; however, some of these factors need to be further reviewed based upon what is contained in Appellee's Brief.

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child.

None.

2. The length of time the children have resided outside the State of West Virginia.

The West Virginia Family Court held that a primary factor in child custody cases is the exercise by each parent of parental care and responsibilities at the time of the parents' separation, finding that the evidence thereon is in West Virginia, not Ohio. West Virginia Code §48-9-206(a). The West Virginia Family Court considered December 1, 2005, as the date of the parties' separation when the Appellant relocated to Ohio with the parties' twin daughters. However, the

Court should have used the date when Appellee decided not to relocate in Ohio. Under West Virginia law, the date of separation is the date that the strife giving rise to the divorce proceedings began. Campbell v. Campbell, 194 W. Va, 334, 460 S.E.2d 469 (1995). The Appellee acquiesced in Appellant's relocation to Ohio with the twins. See page 6 of his Brief. The decision to file legal separation and divorce complaints did not arise until the Appellee decided not to relocate to Ohio in March, 2006.

At the time Appellant filed her Complaint for Legal Separation, Spousal Support, Child Support, Attorneys Fees, Allocation of Parental Rights and Responsibilities, Restraining Orders, and Further Legal and Equitable Relief in Ohio, the twins had resided with her for over four (4) months in Ohio. They had been enrolled in Hathaway Brown, a private school, since December 1, 2005. They have attended said school for half of their sixth grade year, all of their seventh grade year, and will start eighth grade soon. They have participated in extracurricular school activities in Ohio, have developed friendships and have had their medical, dental and psychological care provided in Ohio. Under West Virginia law, when children have been in one home for a substantial period of time, their environment and sense of security should not be disturbed without a clear showing of significant harm to the children. Clifford K. v. Paul S., 217 W.Va. 625, 619 S.E.2d 138 (2005). The parties' twin daughters have resided in Ohio with the Appellant for more than twenty (20) months. There has been substantial meaningful evidence developed in the State of Ohio concerning the twins during that period of time.⁷ Therefore, Ohio is the most convenient forum to hear the child custody issues.

⁷ The child custody issues primarily involve the twins as Abigail will be a senior at Pomfret School in Connecticut this Fall, and will graduate from high school shortly after her seventeenth (17th) birthday. She will probably attend college in the Fall of 2008 away from the residence of either parent.

3. The distance between the court in this state and the court in the state that would assume jurisdiction.

Appellee admits that he suffers from Post Polio Syndrome and claims that he is in a state of progressively deteriorating health for this travel issue. However, for the factual issue of why Appellant sought employment away from West Virginia University, he claims that he is still in good health, able to practice full-time, and his illness had not progressed to such an extent that it would have been necessary for Appellee to be the primary financial support of the family. Appellee continues to practice full-time at West Virginia University Hospital, works long hours, and also commutes by car to Connecticut on a regular basis to visit his daughter, Abigail. It does not appear that Appellee's illness has gotten progressively worse so he cannot drive to Cleveland, for hearings in Ohio.

4. The relative financial circumstances of the parties.

The Restraining Order on the marital assets does not pertain to the salary earned by either party. Furthermore, Appellee's attorney could seek an order to use part of the funds for the tuition and expenses for their three (3) infant children if the need arises. Both parties have a mortgage payment, and they each share in the cost of the education and living expenses of their three (3) infant children. Appellee is restrained from accessing the marital assets to the same extent as Appellant.

5. Any agreement of the parties as to which state should assume jurisdiction.

None.

6. The nature and location of evidence required to resolve the pending litigation, including testimony of the children.

Appellee claims that all third-party witnesses involving the twins live in West Virginia. The twins have lived in Ohio since December 1, 2005, and there is substantial evidence in Ohio

concerning the care and well-being of the twins. Furthermore, the children will have input as to their preference as Pamela Gorski has been appointed their Guardian ad Litem in Ohio. (See Ohio Order dated October 31, 2006, identified and attached to the Petition for Appeal as Exhibit 5.) Pamela Gorski has directly communicated with the twins, and will continue to receive information concerning their desires with regard to their future parenting plan. The twins also have a Guardian ad Litem, Teresa J. Lyons, appointed in West Virginia.

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present evidence.

Appellee alleges that the Ohio Court has entered numerous *ex parte* orders without the Appellee being notified of the Court date or hearing in advance of the same being held. That is not true. The Docket Information Statement from the Court of Common Pleas Domestic Relations Court, Cuyahoga County, Ohio, is attached to this Reply Brief as Exhibit 2. Appellee was represented for most of this time by attorney Herbert Palkovitz. Mr. Palkovitz filed Motions and other pleadings as shown on the Docket Statement.

It is true that an *Ex Parte* Order was entered on April 6, 2006, at the time the Complaint for Legal Separation was filed, freezing all of the parties' marital assets. When the Order dated June 6, 2006, by the Ohio Court to take jurisdiction of the custody issue was entered, the Court had received Appellant's Motion for the Court to Exercise Jurisdiction and Motion for Communication Between the Courts and Appellee's Motion to Dismiss. Three (3) days later, on June 9, 2006, Appellee's attorney filed a Motion to Vacate the Judgment Taking Jurisdiction. Appellee's attorney filed a Notice of Appeal of Decision on July 6, 2006. Appellee and his attorney received Notice of a hearing on her Motion for Interim Custody to be held on October 12, 2006, rescheduled for October 25, 2006, resulting in the Temporary Custody Order dated October

31, 2006.⁸ Appellee's attorney also received notice of the pretrial set for December 1, 2006, before Magistrate Patrick R. Kelly.

Appellee was represented by his attorney, Herbert Palkovitz, at all of these hearings, either in person or telephonically. The fact that Appellee chose not to appear was of his own doing as he appeared to be stonewalling the Ohio proceedings. Furthermore, after the Temporary Parenting Plan was entered by Order dated October 31, 2006, if Appellee's attorney had filed a written request, an oral hearing would have been held by the Court on the Temporary Parenting Plan within twenty-eight (28) days if he desired to modify the Temporary Parenting Plan Order. See Ohio Rules of Civil Procedure, CIV. R. 75(N)(2).

There have been no *ex parte* orders entered by the Ohio Court, other than the *Ex Parte Order* dated April 6, 2006, freezing the marital assets of the parties. Appellee has been represented by his attorney at all proceedings before the Ohio Court, and had the opportunity to appear if he so desired.

8. The familiarity of the Court of each State with the facts and issues in the pending litigation.

Appellee's counsel has stated that if this were a race, the Ohio Court has won. If this is a race, it is proceeding at a snail's pace. Both parties initially filed proceedings in Ohio and West Virginia in April, 2006. As of this date, neither Court has held any evidentiary hearings concerning the issue of custody of the three (3) children, or on any other issues in this divorce case.

Appellee filed a Writ of Prohibition on November 30, 2006, to prevent the Ohio Court from proceeding to hear and determine the child custody issue. On July 24, 2007, the Court of

⁸ Appellant's Exhibit 4 attached to the Petition for Appeal.

Appeals of Ohio denied the Writ of Prohibition, so the Ohio Court can now move toward a final determination on the issue of child custody.

Appellee again alleges that the hearings have been held in Ohio without proper notice by using the form of attorney conferences with no advance notice to Appellee to attend. The Docket Information Statement attached hereto as Exhibit No. 1, clearly shows that Appellee's attorney received notice of all the hearings and attorney conferences.

C. COMMUNICATION BETWEEN THE COURTS

Appellee apparently discounts this argument as being legitimate since he cites no cases involving this issue. Appellee rests his argument upon two (2) factors: (1) West Virginia Code §48-20-110 provides that the courts may communicate concerning competing jurisdictions involving child custody; and (2) the Family Court Judge of Monongalia County, West Virginia, in his Order dated August 9, 2006, stated that the Ohio Court and West Virginia Court "have made repeated efforts to communicate with one another in this matter and exchanged documents and notes regarding the same, but due to the case loads and dockets of the respective courts, have been unable to engage in direct verbal communications."

Appellant has cited numerous cases in his original Brief in which the courts have held that there must be meaningful verbal communications between the courts. In two (2) of the states, Kansas and Kentucky, the statute contained the words "may communicate."

Even though the Order from the Family Law Court of West Virginia indicates the two (2) Courts attempted to communicate and had exchanged documents and notes, there is no evidence in the file to show that the Ohio and West Virginia Courts have exchanged anything other than telephone messages. There is no record that shows the conflicting Courts have communicated through writings and documents. If the two (2) competing Courts had had meaningful

communication concerning jurisdiction of the child custody issues, the situation the Rosen family faces today, with two (2) competing courts entering contrary child custody orders, would not exist.

D. WAIVER OF RIGHTS UNDER THE UCCJEA

Under Ohio law, a waiver is the voluntary relinquishment of a known right or privilege, whether contractual, statutory or constitutional. State ex rel. Stacy v. Batavia School District Board of Education, 97 Ohio St.3d 269, 273 (2002). Appellee waived any statutory rights under the UCCJEA by acquiescing in the twins' relocation to Ohio with the Appellant and assisting them in their move with the belief that Appellee would soon be joining them in Ohio.

Appellee claims that he never expressly waived his rights under the UCCJEA. However, under Ohio law, a "waiver by estoppel" occurs when the acts or conduct of a person are inconsistent with an intent to claim a right and have been such as to mislead the other person to his or her prejudice, thereby estopping the person having the right from insisting upon it. See Harless v. Sprague, unreported, Case No. 23546 (Summit County, June 27, 2007). National City Bank v. Rini, 162 Ohio App.3d 662 (2005); Mark-It Place, Inc. v. New Plan Excel Realty Trust, Inc., 156 Ohio App.3d 65 (2004). It is the person's inconsistent conduct, not his or her intent, that is the determining factor. The Appellee's conduct in acquiescing to Appellants' relocation with the twins to Ohio was conduct inconsistent with his claiming any statutory rights under the UCCJEA, which is designed to prevent parental kidnappings and forum shopping.

The Ohio Supreme Court decision of Kelm v. Kelm, 92 Ohio St.3d 223 (2001), does not support Appellee's contention that his waiver of his UCCJEA statutory rights would violate public policy under the facts and circumstances of this case when it held that a parent cannot waive a court determination regarding child custody by agreeing to arbitrate the issue. In Kelm, the Ohio

Supreme Court invalidated a waiver of a court determination of child custody under an arbitration agreement.

Finally, Appellee states that he was advised by a West Virginia attorney, prior to the twins' relocation, that they would remain residents of West Virginia for six months following their departure to Ohio. See page 5, footnote 3. However, Appellee did not advise Appellant thereof. The Appellant, in good faith, relied on Appellee's acquiescence to change her position by relocating with the twins to Ohio. Therefore, Appellant is estopped from raising his UCCJEA claims.

Under these circumstances, the waiver of Appellee's rights under the UCCJEA does not violate public policy.

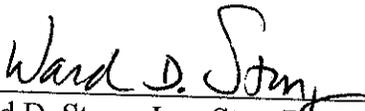
RELIEF PRAYED FOR

Appellant respectfully requests that this Honorable Court reverse the decision of the Family Law Court of Monongalia County, West Virginia, and hold that the Family Law Court should have given full faith and credit to the Ohio Court's Order of June 6, 2006, or, in the alternative, that the Family Law Court of Monongalia County should have found that the Ohio Court was the more convenient forum to hear the child custody issue as Ohio had the maximum access to the relevant evidence regarding the children's present and future care, protection, training and personal relationships. In the alternative, Appellant respectfully requests that this Court remand this case to the Family Law Court of Monongalia County, West Virginia, with the directive that the Court have meaningful communication with the Ohio Court to determine which Court should take jurisdiction of the child custody case. If this Honorable Court affirms the decision of the Family Law Judge of Monongalia County, there will be competing orders from

two (2) jurisdictions involving custody of the three (3) children, particularly with regard to the twins, which will be highly detrimental to their future health and well-being.

KATHLEEN R. ROSEN,

By Counsel.



Ward D. Stone, Jr. – State Bar I.D. No. 3626
Edward L. Harman, Jr. – State Bar I.D. No. 7169
SPILMAN THOMAS & BATTLE, PLLC
150 Clay Street, Second Floor
Morgantown, WV 26501
(304) 291-7920

Counsel for Appellant

CERTIFICATE OF SERVICE

I, Ward D. Stone, Jr., counsel for the Appellant, do hereby certify that I have served a true copy of the foregoing **Reply Brief of Appellant, Kathleen R. Rosen**, by United States mail, postage prepaid, this 7th day of August, 2007, as follows:

Michelle Widmer-Eby
Counsel for Appellee
211 New Jersey Avenue
Morgantown, WV 26501

The Honorable James Jeffrey Culpepper
Family Court Judge of Monongalia County
271 Spruce Street
Morgantown, WV 26505

The Honorable Russell M. Clawges, Jr.
Chief Judge, 17th Judicial Circuit
Monongalia County Courthouse
243 High Street
Morgantown, WV 26505

Teresa J. Lyons, Esq.
Guardian ad Litem
BYRNE HEDGES & LYONS
141 Walnut Street
Morgantown, WV 26505

Ward D. Stone

WARD D. STONE, JR. – State Bar I.D. No. 3626
Counsel for Appellant
SPILMAN THOMAS & BATTLE, PLLC
150 Clay Street, Second Floor
Morgantown, WV 26501
(304) 291-7920