

## Appendix A

Supreme Court of Ohio Clerk of Court - Filed November 28, 2023 - Case No. 2023-0709

# The Supreme Court of Ohio

Simone Craig

**v.**

Terrence Gilchrist


Case No. 2023-0709

RECONSIDERATION ENTRY

Franklin County

It is ordered by the court that the amended motion for reconsideration in this case is denied.

(Franklin County Court of Appeals; Nos. 22AP-52 and 22AP-55)

  
Sharon L. Kennedy  
Chief Justice

**The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>**

## Appendix B

Supreme Court of Ohio Clerk of Court - Filed August 29, 2023 - Case No. 2023-0709

# The Supreme Court of Ohio

Simone Craig

v.

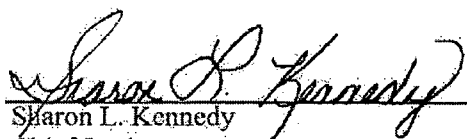
Terrence Gilchrist

Case No. 2023-0709

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Franklin County Court of Appeals; Nos. 22AP-52 and 22AP-55)

  
Sharon L. Kennedy  
Chief Justice

The Official Case Announcement can be found at <http://www.supremecourt.ohio.gov/ROD/docs/>

Appendix C

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

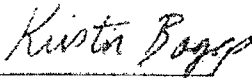
Simone Craig, :  
 :  
Plaintiff-Appellee, : No. 22AP-52  
 : &  
v. : No. 22AP-55  
 : (C.P.C. No. 17JU-4732)  
Terrence Gilchrist, :  
 : (REGULAR CALENDAR)  
Defendant-Appellant. :

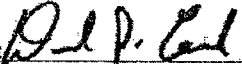
JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered on April 18, 2023, it is the order of this court that the applications for reconsideration and consideration en banc, filed on March 27, 2023, are denied.

MENTEL, BOGGS, & LELAND, JJ.

By:   
Judge Michael C. Mentel

By:   
Judge Kristin Boggs

By:   
Judge David J. Leland

Franklin County Ohio Court of Appeals Clerk of Courts- 2023 May 16 11:02 AM-22AP000052

Appendix D

Franklin County Ohio Clerk of Courts of the Common Pleas- 2023 Mar 17 9:24 AM-17JU004732

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Simone Craig, :  
Plaintiff-Appellee, : No. 22AP-52  
v. : &  
 : No. 22AP-55  
 : (C.P.C. No. 17JU-4732)  
Terrence Gilchrist, : (REGULAR CAELNDAR)  
Defendant-Appellant. :

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MEMORANDUM DECISION

Rendered on March 16, 2023

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*Terrence E. Gilchrist*, pro se, for appellant.

*Kyle B. Keener*, Franklin County CSEA, for appellee.

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ON MOTION TO CERTIFY A CONFLICT

MENTEL, J.

{¶ 1} On December 23, 2022, defendant-appellant, Terrence Gilchrist, pro se, filed a motion to certify an alleged conflict with the Supreme Court of Ohio, pursuant to App.R. 25(A), based on our December 13, 2022 decision in *Craig v. Gilchrist*, 10th Dist. No. 22AP-52, 2022-Ohio-4477 ("*Craig II*"). For the reasons that follow, we deny appellant's motion.

**I. PROCEDURAL BACKGROUND AND ANALYSIS**

{¶ 2} On December 20, 2018, a magistrate with the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, found appellant in contempt for noncompliance with a prior child support obligation. *Id.* at ¶ 2. Appellant was sentenced to 30 days in jail, which it suspended on the condition that appellant purge the contempt by liquidating the support arrearage of \$48,246.60 (as of June 30, 2018) at a rate of \$50.00 per month, until the arrears were fully liquidated. *Id.* Appellant failed to object to the magistrate's decision or appeal the December 20, 2018 judgment entry. *Id.*

On October 24, 2019, the trial court found appellant failed to meet the requisite purge conditions and imposed 10 days of the 30-day suspended sentence.<sup>1</sup> Appellant appealed the trial court's decision. On June 29, 2021, we dismissed the appeal as moot finding that appellant had already served all 10 days in jail. *Craig v. Gilchrist*, 10th Dist. No. 19AP-804, 2021-Ohio-2199 ("*Craig I*"). Appellant filed a notice of appeal, which the Supreme Court declined to accept on November 23, 2021. The Supreme Court denied appellant's motion for reconsideration on February 1, 2022.

{¶ 3} On December 21, 2021, the trial court, after conducting several more review hearings in this matter, found appellant had again failed to comply with the purge conditions and imposed the remaining 12 days in jail on the suspended sentence. *Id.* at ¶ 4. In *Craig II*, appellant presented a series of constitutional violations and jurisdictional issues involving the trial court's order of contempt for non-compliance with a previously ordered child support obligation. This court found that appellant's appeal of the trial court's entry imposing a 12-day term of incarceration was moot as he had already served the entirety of the sentence. *Id.* at ¶ 4, 9. We then found that none of the established exceptions to the mootness doctrine applied in this case. Finally, we concluded that despite *Craig I* pending before the Supreme Court at the time the 12-day term of incarceration was imposed, the trial court had jurisdiction to order appellant to serve the 12 additional days of the suspended sentence. We wrote that, in addition to the absence of a stay in either case, both matters concerned different facts and circumstances of non-compliance with the underlying contempt order, which led the trial court to impose two separate terms of incarceration from the original 30-day suspended sentence. *Id.* at ¶ 15.

{¶ 4} Pursuant to the Ohio Constitution, Article IV, Section 3(B)(4), the court of appeals of this state are empowered to certify a conflict when its judgment "is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state." The Supreme Court has set forth the standard for a court of appeals to examine a motion to certify as follows:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict *must* be "upon the same question." Second, the alleged conflict must be on a rule of law

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<sup>1</sup> Appellant had previously served eight additional days of the suspended sentence.

-- not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.

(Emphasis sic.) *Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 596 (1993)

{¶ 5} To constitute a certified conflict, it is insufficient for the reasoning provided in the opinions of the two courts of appeals be inconsistent. *Thyroff v. Nationwide Mut. Ins. Co.*, 10th Dist. No. 15AP-1043, 2016-Ohio-5715, ¶ 18 (further citation omitted.) " 'For a court of appeals to certify a case as being in conflict with another case, it is not enough that the reasoning expressed in the opinions of the two courts of appeals be inconsistent; the judgments of the two courts must be in conflict.' " *Id.*, quoting *State v. Hankerson*, 52 Ohio App.3d 73 (2d Dist.1989), paragraph two of the syllabus. Factual distinctions in the cases do not provide a basis to certify a conflict. *Whitelock* at 599.

{¶ 6} Gilchrist argues there is a certified conflict between our decision in *Craig II* and decisions out of the First, Second, Fourth, Fifth, Eighth, Ninth, and Eleventh District Courts of Appeal that he claims stand for the proposition that a "trial court loses jurisdiction to interfere with appellate review by enforcing a judgment after perfection of an appeal with the Supreme Court of Ohio." (Dec. 23, 2022 Mot. to Certify a Conflict at 2.) See *Setter v. Durrani*, 1st Dist. No. C-210428, 2022-Ohio-1022; *LexisNexis v. Murrell*, 2d Dist. No. 29018, 2021-Ohio-3527; *State v. Hearn*, 4th Dist. No. 20CA7, 2021-Ohio-594; *Midgett v. Sheldon*, 5th Dist. No. 2021 CA 0059, 2021-Ohio-3096; *Black v. Hicks*, 8th Dist. No. 105248, 2018-Ohio-2289; *In re M.O.*, 9th Dist. No. 28828, 2018-Ohio-2176; *State v. Victor*, 11th Dist. No. 2015-G-0010, 2015-Ohio-5520. Appellant contends the instant case, as well as several other appellate cases across Ohio,<sup>2</sup> are in direct conflict because they stand for the proposition that "upon perfection of an appeal a trial court still retains jurisdiction to act over proceedings upon its judgments, including its judgments upon appeal, and that a court must grant a stay." (Mot. to Certify a Conflict at 3.) In short, appellant contends that a conflict exists as to whether the trial court lacked jurisdiction to impose 12 additional days of the suspended sentence for noncompliance with the purge conditions in *Craig II*

<sup>2</sup> Appellant cites, in addition to the instant case, *Chase Home Fin., LLC v. Wilks*, 7th Dist. No. 13 MA 0184, 2016-Ohio-3382; *State v. Thompson*, 10th Dist. No. 20AP-352, 2021-Ohio-4491; *Lloyd v. Thornsbery*, 11st Dist. No. 2019-P-0108, 2021-Ohio-240 as conflicting cases.

while there was a pending appeal involving the first noncompliance sentence pending before the Supreme Court.

{¶ 7} Upon review, we do not find there is a certified conflict regarding *Craig II* and the cited cases as the trial court's determination of noncompliance was based on a distinct set of facts and circumstances than the matter that was pending before the Supreme Court. It is important to note that this is not an appeal of the contempt order found in the December 20, 2018 judgment entry, but, two separate findings of noncompliance with the purge conditions that resulted in two separate terms of incarceration derived from the original suspended sentence. While the trial court was divested of jurisdiction over matters involving the trial court's imposition of the 10-day suspended sentence, it retained jurisdiction over collateral matters, i.e., the continued enforcement of the contempt order and purge conditions. " '[O]nce an appeal is perfected, the trial court is divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment.' " *State ex rel. Electronic Classroom of Tomorrow v. Cuyahoga Cty. C.P.*, 129 Ohio St.3d 30, 2011-Ohio-626, ¶ 13, quoting *State ex rel. Rock v. School Emps. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, ¶ 8; see also *State ex rel. Special Prosecutors v. Judges, Ct. of Common Pleas*, 55 Ohio St.2d 94, 97 (1978) (writing the trial court "does retain jurisdiction over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt, appointment of a receiver and injunction"). Here, while derived from the same underlying judgment entry, the orders that form the basis for appeals in *Craig I* and *Craig II* were based on different facts and circumstances. Moreover, the trial court's review during a purge hearing is exceedingly limited to the facts at hand and would not, in this instance, affect issues pending on appeal. See *Liming v. Damos*, 4th Dist. No. 10CA39, 2011-Ohio-2726, ¶ 25 ("the only question at issue during a purge hearing, i.e. whether the contemnor purged the contempt, is a limited one and presents a low risk of an erroneous decision by the trial court"). Even if the trial court lost jurisdiction regarding the initial entry, it still retained jurisdiction over the case and was empowered to enforce the purge conditions found in the December 20, 2018 judgment entry. If appellant were correct in his jurisdictional argument, the trial court would have no remedy for enforcing

the remaining terms of the purge order for any subsequent, unrelated violations while the case was pending review.

{¶ 8} This case is distinct from the purportedly conflicting cases as those involve the trial court acting on an issue at a time when the matter was pending before a reviewing court.<sup>3</sup> See *Durrani* (finding the trial court lacked jurisdiction to reduce the damages award while defendants' notice of appeal was pending before the Supreme Court as it was inconsistent with the Supreme Court's jurisdiction to consider whether to reverse the judgment regarding liability); *Murrell* (dismissing an appeal of the trial court's order regarding the amount of attorney's fees and rendering a final judgment, that was entered while a prior judgment entry that awarded damages in favor of plaintiff and found that plaintiff was entitled to attorney fees, was pending appeal because the amount of attorney fees could be affected by or subject to an appellate court's determination of the original appeal); *Hearn* (concluding the trial court's issuance of two subsequent sentencing entries, after appellant filed his notice of appeal, were inconsistent with the appellate court's jurisdiction to review the trial court's initial judgment); *Midgett* (finding a prisoner was not entitled to a writ of habeas corpus when the Supreme Court had not yet decided to exercise jurisdiction on the pending appeal); *Black* (concluding the trial court lacked jurisdiction to begin a jury trial as a prior appeal in the case, involving a show cause hearing for failing to respond to discovery requests, was pending before the Supreme Court); and *M.O.* (finding the trial court had jurisdiction to issue a nunc pro tunc entry as it was issued before the appellant's perfection of his appeal to the Supreme Court). Accordingly, there is no conflict between *Craig II* and the cited cases on this issue.<sup>4</sup>

<sup>3</sup> We also note that there is no conflict with the judgment in *Craig II* and *Victor*. A brief review is instructive. In *Victor*, appellant filed three appeals derived from a municipal court case involving the offenses of operating a motor vehicle while under the influence of alcohol and failure to control. The first two appeals were consolidated by the reviewing court. *Id.* at ¶ 1-2. The 11th District Court of Appeals found the consolidated matters well-taken, and it reversed and remanded the case for a new trial. *Id.* at ¶ 3. The third appeal, which was the subject of *Victor*, was ultimately dismissed as moot finding all matters stemmed from the same case, which were now properly back before the trial court. Because *Victor* concerns whether the third appeal was moot, and not whether the court had jurisdiction to review the case, we find it distinct from the other allegedly conflicting cases. Furthermore, the mootness analysis in *Victor* aligns with our analysis in *Craig II*. As such, we find no conflict exists between the two cases.

<sup>4</sup> As there is no conflict between *Craig II* and the above cases, we decline to examine whether there is a conflict between the other cases appellant claims align with *Craig II* as that would exceed the limitations of App.R. 25.



{¶ 9} Based on the forgoing, we find appellant has not established that our judgment in *Craig II* is in conflict with the judgment of another appellate court on the particular issue on which appellant seeks certification.

## II. CONCLUSION

{¶ 10} For the above reasons, we find appellant failed to satisfy the grounds for certification of a conflict under App.R. 25(A). Accordingly, appellant's motion to certify a conflict is denied.

*Motion to certify conflict denied.*

BOGGS and LELAND, JJ., concur.

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Appendix E

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Simone Craig, :  
Plaintiff-Appellee, : No. 22AP-52  
v. : &  
Terrence Gilchrist, : No. 22AP-55  
(C.P.C. No. 17JU-4732)  
Defendant-Appellant. : (REGULAR CALENDAR)

JOURNAL ENTRY

For the reasons stated in the memorandum decision of this court rendered on April 18, 2023, it is the order of this court that the applications for reconsideration and consideration en banc, filed on December 23, 2022, are denied.

MENTEL, BOGGS, & LELAND, JJ.

By /S/ JUDGE  
Judge Michael C. Mentel

Franklin County Ohio Court of Appeals Clerk of Courts- 2023 Apr 28 2:56 PM-22AP000052

Tenth District Court of Appeals

**Date:** 04-28-2023  
**Case Title:** SIMONE CRAIG -VS- TERRENCE GILCHRIST  
**Case Number:** 22AP000052  
**Type:** JOURNAL ENTRY

It Is So Ordered

A handwritten signature in cursive script, reading "Michael C. Mentel", is written over a circular official seal. The seal features a star in the center and the words "JUDICIAL BRANCH" and "OHIO" around the perimeter.

/s/Judge Michael C. Mentel

Electronically signed on 2023-Apr-28 page 2 of 2

Appendix F

Franklin County Ohio Clerk of Courts of the Common Pleas- 2023 Apr 20 1:23 PM-17JU004732

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Simone Craig,	:	
Plaintiff-Appellee,	:	No. 22AP-52
	:	&
v.	:	No. 22AP-55
	:	(C.P.C. No. 17JU-4732)
Terrence Gilchrist,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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MEMORANDUM DECISION

Rendered on April 18, 2023

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*Kyle B. Keener*, Franklin County CSEA, for appellee.

*Terrence Gilchrist*, pro se.

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ON APPLICATIONS FOR RECONSIDERATION  
AND CONSIDERATION EN BANC

MENTEL, J.

{¶ 1} On December 23, 2022, defendant-appellant, Terrence Gilchrist, filed a motion for reconsideration, which we construed as an application for reconsideration, pursuant to App.R. 26(A), of our December 13, 2022 decision in *Craig v. Gilchrist*, 10th Dist. No. 22AP-52, 2022-Ohio-4477 (“*Craig II*”), dismissing appellant’s appeal as moot. Also on December 23, 2022, appellant filed an application for en banc review contending that our decision in this case created several intradistrict conflicts. For the reasons that follow, we deny appellant’s application for reconsideration and en banc review.

**I. Procedural Background and Analysis**

{¶ 2} This court set out the facts and procedural history of this case in our March 16, 2023 memorandum decision denying appellant's motion to certify a conflict. In the decision, this court wrote:

On December 20, 2018, a magistrate with the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, found appellant in contempt for noncompliance with a prior child support obligation. *Id.* at ¶ 2. Appellant was sentenced to 30 days in jail, which it suspended on the condition that appellant purge the contempt by liquidating the support arrearage of \$48,246.60 (as of June 30, 2018) at a rate of \$50.00 per month, until the arrears were fully liquidated. *Id.* Appellant failed to object to the magistrate's decision or appeal the December 20, 2018 judgment entry. *Id.* On October 24, 2019, the trial court found appellant failed to meet the requisite purge conditions and imposed 10 days of the 30-day suspended sentence. Appellant appealed the trial court's decision. On June 29, 2021, we dismissed the appeal as moot finding that appellant had already served all 10 days in jail. *Craig v. Gilchrist*, 10th Dist. No. 19AP-804, 2021-Ohio-2199 ("*Craig I*"). Appellant filed a notice of appeal, which the Supreme Court declined to accept on November 23, 2021. The Supreme Court denied appellant's motion for reconsideration on February 1, 2022.

On December 21, 2021, the trial court, after conducting several more review hearings in this matter, found appellant had again failed to comply with the purge conditions and imposed the remaining 12 days in jail on the suspended sentence. *Id.* at ¶ 4. In *Craig II*, appellant presented a series of constitutional violations and jurisdictional issues involving the trial court's order of contempt for non-compliance with a previously ordered child support obligation. This court found that appellant's appeal of the trial court's entry imposing a 12-day term of incarceration was moot as he had already served the entirety of the sentence. *Id.* at ¶ 4, 9. We then found that none of the established exceptions to the mootness doctrine applied in this case. Finally, we concluded that despite *Craig I* pending before the Supreme Court at the time the 12-day term of incarceration was imposed, the trial court had jurisdiction to order appellant to serve the 12 additional days of the suspended sentence. We wrote that, in addition to the absence of a stay in either case, both matters concerned different facts and circumstances of non-compliance with the underlying contempt order, which led the trial court to impose two

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separate terms of incarceration from the original 30-day suspended sentence. *Id.* at ¶ 15.

(Mar. 16, 2023 Memo Decision at ¶ 2-3.)

#### **A. Application for Reconsideration**

¶ 3 Pursuant to App.R. 26(A), a reviewing court shall consider if the application for reconsideration “calls to the attention of the court an obvious error in its prior determination or raises an issue that was not fully considered by the court when it should have been.” *Carmen v. Baier*, 10th Dist. No. 17AP-443, 2019 Ohio App. LEXIS 5156, \*2 (Dec. 5, 2019) (memorandum decision), citing *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 17AP-684, 2019-Ohio-1069, ¶ 2, citing *Matthews v. Matthews*, 5 Ohio App.3d 140 (10th Dist.1981). The purpose of an application for reconsideration is not to allow the moving party to relitigate an issue when it merely disagrees with the previous conclusion of the court. *State v. Stewart*, 10th Dist. No. 11AP-787, 2013-Ohio-78, ¶ 3, citing *Columbus v. Dials*, 10th Dist. No. 04AP-1099, 2006-Ohio-227, ¶ 3, citing *State v. Owens*, 112 Ohio App.3d 334, 336 (11th Dist.1996).

¶ 4 Here, appellant does not present any arguments unique to his application for reconsideration. Instead, appellant merges his arguments for reconsideration with his application for en banc review. To the extent that the arguments presented in appellant’s filing seek reconsideration of *Craig II*, we deny appellant’s application for reconsideration. This court did not commit an error, obvious or otherwise, nor were any issues raised for our consideration that were not fully considered in our prior decision. Appellant fails to provide any actual basis or analysis to support his allegations and appears to merely disagree with the outcome of his appeal. An application for reconsideration is not meritorious simply because the moving party disagrees with the reasoning employed in the initial decision. *Stewart* at ¶ 6.

¶ 5 For the foregoing reasons, we deny appellant’s application for reconsideration.

#### **B. Application for En Banc Consideration**

##### **1. *State v. Thompson*, 10th Dist. No. 20AP-352, 2021-Ohio-4491**

¶ 6 In appellant’s application for en banc consideration, he contends that our decision in *Craig II* conflicts with this court’s decision in *State v. Thompson*, 10th Dist. No.

20AP-352, 2021-Ohio-4491. Appellant argues that an “intra-district conflict exists with regard to perfection of an appeal divests (sic) a trial court of jurisdiction to conduct enforcement proceedings as well as act upon its judgments with sanctions such as imposition of a sentence.” (Dec. 23, 2022 Application for En Banc Consideration at 2.)

{¶ 7} Pursuant to App.R. 26(A)(2), this court will grant an application for en banc consideration “[u]pon a determination that two or more decisions of the court on which they sit are in conflict \* \* \*.” *Stewart* at ¶ 10. This court has found that if a reviewing panel “‘determine[s] that two or more decisions of the court on which they sit are in conflict, they must convene en banc to resolve the conflict.’” *Id.*, quoting *McFadden v. Cleveland State Univ.*, 120 Ohio St.3d 54, 2008-Ohio-4914, paragraph two of the syllabus.

{¶ 8} Upon review, we find that a conflict does not exist between *Thompson* and *Craig II*. In *Thompson*, this court found that the trial court lacked jurisdiction to resentence a defendant on two counts that were on the same issues then pending appellate review. *Thompson* at ¶ 33. The *Thompson* court, however, found the trial court retained jurisdiction over the defendant to revoke his judicial release on other counts in the judgment. “Thus, a trial court possesses ‘jurisdiction to sentence a defendant for a community-control violation during the pendency of the defendant’s appeal from the underlying judgment of conviction.’” *Id.* at ¶ 22, quoting *State v. Buttery*, 1st Dist. No. C-170141, 2018-Ohio-2651, syllabus. Here, *Craig I* and *Craig II* concerned two separate orders of noncompliance originating from two separate sets of facts. Consistent with *Thompson*, the trial court retained jurisdiction for enforcement of future instances of noncompliance of the contempt order as it was distinct from the initial order at issue in *Craig I*. See *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97 (1978) (writing the trial court “does retain jurisdiction over issues not inconsistent with that of the appellate court \* \* \*, such as the collateral issues like contempt, appointment of a receiver and injunction.”). As such, we decline to grant en banc review on this issue.

**2. *Yusuf v. Omar*, 10th Dist. No. 06AP-416, 2006-Ohio-6657**

{¶ 9} Appellant next claims that an intradistrict conflict exists between *Craig II* and *Yusuf v. Omar*, 10th Dist. No. 06AP-416, 2006-Ohio-6657 “with regard to whether [Uniform Interstate Family Support Act] statutorily does not confer subject matter

jurisdiction over custody and visitation.” (Application for En Banc Consideration at 2.) In *Yusuf*, this court wrote that the Uniform Interstate Family Support Act (“UIFSA”), “provides for the registration of support orders issued in other states, the establishment of support orders upon petition from support agencies in other states, and the enforcement of out-of-state orders.” *Id.* at ¶ 10. The *Yusuf* court concluded that UIFSA did not provide a method of enforcement for matters concerning divorce, custody, or visitation. *Id.* at ¶ 15. Accordingly, the trial court’s jurisdiction under UIFSA was limited to paternity and child support matters. Upon review, there is no intradistrict conflict requiring en banc review. In *Craig II*, we considered assignments of error derived from noncompliance with purge conditions of a contempt order based on appellant’s failure to pay child support. *Yusuf* concerned a jurisdictional question over a counterclaim for divorce. The issues presented in *Craig II* do not concern a dispute over custody or visitation but solely focused on noncompliance with the purge conditions of a contempt entry. Therefore, we find no conflict amongst these decisions and, accordingly, deny appellant’s application for en banc consideration.

**3. *Boggs v. Denmead*, 10th Dist. No. 17AP-199, 2018-Ohio-2408<sup>1</sup>**

{¶ 10} Finally, appellant claims there is an intradistrict conflict with *Craig II* and our decision in *Boggs v. Denmead*, 10th Dist. No. 17AP-199, 2018-Ohio-2408, as to “whether Civ.R. 3(A) perfection of service is a hyper-technicality or violative of procedural due process.” (Application for En Banc Consideration at 2.) In *Boggs*, this court found that the complaint was properly dismissed for lack of jurisdiction based on a lack of service. In *Craig II*, we agreed with our prior finding in *Craig I* that appellant’s arguments as to sufficiency of service and lack of jurisdiction were without merit. Appellant has failed to demonstrate that a conflict exists between *Boggs* and the present case or, as he stated in his motion, whether either case concluded that Civ.R. 3(A) is a “hyper-technicality or

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<sup>1</sup> We note that appellant cites several other cases in his reply brief that he contends also constitute an intradistrict conflict meriting en banc review. It is well-settled law that a reply brief should not set forth new arguments as it denies the opposing party an opportunity for a meaningful opportunity to respond. “The purpose of a reply brief is to afford the appellant an opportunity to respond to the brief of the appellee, not to raise a new argument for the first time.” *Russell v. Ryan*, 10th Dist. No. 20AP-176, 2021-Ohio-2505, ¶ 34, quoting *Cullinan v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 15AP-390, 2016-Ohio-1083, ¶ 19. As such, we decline to examine these matters raised for the first time in appellant’s reply brief. *Russell* at ¶ 34, citing *State v. E.T.*, 10th Dist. No. 17AP-828, 2019-Ohio-1204, ¶ 62. Arguendo, even if we were to consider these cases, we conclude that they do not create an intradistrict conflict warranting en banc review.



violative of procedural due process.” (Application for En Banc Consideration at 2.) After consideration of the two cases at issue, we find that there is no intradistrict conflict requiring en banc review. The cases are consistent in the law, and while they reach different results, the factual distinctions between the cases warrant the differing conclusions by this court.

*Application for reconsideration denied;  
application for consideration en banc denied.*

BOGGS and LELAND, JJ., concur.

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Franklin County Ohio Court of Appeals Clerk of Courts- 2023 Apr 18 12:10 PM-22AP000052

## Appendix G

[Cite as *Craig v. Gilchrist*, 2022-Ohio-4477.]

### IN THE COURT OF APPEALS OF OHIO TENTH APPELLATE DISTRICT

Simone Craig,	:	
	:	No. 22AP-52
Plaintiff-Appellee,	:	(Case No. 17JU-4732)
	:	&
v.	:	No. 22AP-55
	:	(Case No. 17JU-4732)
Terrence Gilchrist,	:	
	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

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### D E C I S I O N

Rendered on December 13, 2022

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**On brief:** *Kyle B. Keener, Franklin County CSEA*, for appellee.<sup>1</sup>

**On brief:** *Terrence E. Gilchrist*, pro se, for appellant.  
**Argued:** *Terrence E. Gilchrist*.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations, Juvenile Branch

MENTEL, J.

{¶ 1} Defendant-appellant, Terrence Gilchrist, pro se, appeals from a December 21, 2021 judgment entry sentencing him to 12 days in the Franklin County Jail for contempt of court and a January 19, 2022 entry denying his motion for release as moot. For the reasons that follow, we find appellant's appeal is moot as he has already served the 12-day sentence imposed by the trial court.

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<sup>1</sup> Counsel for appellee waived its right to appear for oral hearing. (July 26, 2022 Notice.)

## I. FACTS AND PROCEDURAL HISTORY

{¶ 2} This court set forth the facts and procedural history of this matter in *Craig v. Gilchrist*, 10th Dist. No. 19AP-804, 2021-Ohio-2199 ("*Craig I*") writing:

Appellant was obligated to pay \$204 weekly, plus \$50 per week, pursuant to a child support order issued in New Jersey for support of his minor child.<sup>2</sup> Because appellant resides in the state of Ohio, the support order was forwarded to Ohio to be registered for purposes of enforcement. On May 3, 2017, appellant filed a "notice of contest of registration" ("contest"). The magistrate held a hearing on appellant's contest on October 31, 2017. Ultimately, in a judgment entry issued November 6, 2017, the magistrate determined appellant's due process rights were not violated for lack of service and further that appellant failed to meet his burden of proof so as to defeat the registration of the child support order in Ohio. The magistrate overruled appellant's contest and ordered the New Jersey child support order registered in Ohio for enforcement. The trial court adopted the magistrate's decision the same day. Despite having argued at the hearing that his due process rights were violated due to insufficient service, appellant neither filed an objection to the magistrate's decision nor an appeal of the November 6, 2017 judgment entry.

Appellant failed to make any payments of child support and, on September 11, 2018, plaintiff-appellee, Franklin County Child Support Enforcement Agency ("FCCSEA"), filed a motion to have appellant found in contempt for failure to comply with the child support order and to determine and liquidate appellant's child support arrearage. Appellant was personally served by process server with FCCSEA's motion on October 9, 2018. Counsel for appellant filed a request for discovery.

On November 29, 2018, the magistrate held a hearing on FCCSEA's motion. Appellant appeared along with his counsel. Appellant did not testify nor did he raise argument related to service of the registration of the New Jersey order. On December 20, 2018, the magistrate issued a decision finding appellant in contempt and sentencing him to 30 days in the

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<sup>2</sup> According to a registration statement certified on March 23, 2017 by a records custodian reflected in the registration of foreign order request, appellant's child support obligation is stated to be \$204 per week, plus "\$50 p/w," which this court will assume means "per week" when comparing the statement to a cost of living adjustment order dated December 15, 2014 that provides appellant is ordered to pay \$203 per week, effective December 17, 2014, plus \$50 weekly for arrears payback. The record reflects that New Jersey increased appellant's child support obligation in accord with a cost of living adjustment from \$203 per week to \$204 per week. However, the magistrate stated in findings regarding the contempt proceedings that appellant's weekly obligation was \$203 per week as child support.

Franklin County Jail. The magistrate recommended suspending the entire sentence on the condition that appellant purge the contempt by liquidating the support arrearage of \$48,246.60 (as of June 30, 2018) at the rate of \$50.00 per month, plus processing charge, until arrears are fully liquidated. The magistrate's decision also maintained the order to appear and show cause. The magistrate continued the matter until January 24, 2019 for a review of the purge order before the trial court.<sup>3</sup> The trial court adopted the magistrate's decision the same day. Appellant filed neither an objection to the magistrate's decision nor an appeal of the December 20, 2018 judgment entry.

The record reflects 11 review hearings were held before the trial court for review of appellant's compliance with the purge order found in the December 20, 2018 judgment entry. The record also reflects appellant was placed with the Compass Program ("Compass") to assist him with finding employment.

On June 27, 2019, appellant appeared for a review hearing before the trial court. At the conclusion of the hearing the trial court issued an entry sentencing appellant to serve 3 days and suspending 27 days of the 30-day sentence. The matter was continued for further review before the trial court. No appeal was filed by appellant.

Appellant again appeared before the trial court on August 8, 2019 for a review hearing that concluded with the trial court issuing an entry ordering appellant to serve 5 additional days of the suspended sentence and suspending 22 days of the 30-day sentence. The matter was continued for further review before the trial court. Once again, no appeal was filed by appellant.

Appellant was scheduled to appear for a review hearing before the trial court on October 24, 2019. The record reflects that although the hearing was scheduled for 9:00 a.m., as of 11:00 a.m. appellant had not appeared. The trial court went on the record in the matter at 11:00 a.m. and counsel for FCCSEA requested issuance of a capias to secure appellant's presence. In response, counsel for appellant informed the trial court her client had a medical procedure and was trying to appear. The trial court noted appellant had a habit of appearing at 1:30 p.m. and held the matter open until the afternoon docket in the event he appeared.

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<sup>3</sup> Appellant signed a waiver of service of summons and notice of hearing for the January 24, 2019 hearing.

Appellant did appear with counsel the same afternoon for the review hearing. According to counsel for FCCSEA, appellant had not made a single payment to FCCSEA and, as of the date of the hearing, arrears totaled \$61,056.60. Counsel for appellant stated two payments had been made by appellant since September 17, 2019, one for \$10.00 and a second for \$50.00; however, both were paid in New Jersey and not the matter at bar. Counsel for appellant suggested there may be confusion on appellant's part as to where his obligation should be paid. Counsel for FCCSEA did not dispute appellant made a \$10.00 payment, however, maintained appellant had not made a single payment in Ohio through FCCSEA.

Counsel for FCCSEA also noted appellant was placed in the Compass and several review hearings were held regarding appellant's participation in the program. Transcripts from prior hearings indicate appellant did not work with Compass providers and did not comply with orders from Compass. The trial court inquired as to why appellant was not fully employed despite numerous referrals and an application filed with a temporary agency at the court. Appellant's counsel noted appellant had become a substitute teacher with the Columbus Diocese, but that appellant relied on public transportation which interfered with his ability to work on weekends. The trial court's statements during the hearing reflect the trial court was well acquainted with appellant's case and defenses as to why appellant was not yet gainfully employed were not well taken. Counsel for FCCSEA also stated appellant filed an erroneous entry on September 9, 2019 that had to be vacated by Judge Hawkins.

Ultimately, the trial court issued a judgment entry ordering appellant to serve 10 additional days of the suspended sentence and suspending the remaining 12 days of the 30-day sentence.

*Craig I* at ¶ 2-11

{¶ 3} In *Craig I*, appellant asserted three assignments of error regarding the trial court's initial entry ordering him to serve 10 days in the Franklin County Jail. On June 29, 2021, this court found that appellant's arguments as to sufficiency of service and lack of jurisdiction were without merit, and appellant's remaining arguments on appeal were moot as he had already served the 10-day sentence imposed by the trial court. *Id.* at ¶ 12, 23. Appellant filed an appeal with the Supreme Court of Ohio, which was not accepted for review. *C.S. v. G.T.*, 165 Ohio St.3d 1456, 2021-Ohio-4033 (Nov. 23, 2021).

{¶ 4} The trial court set review hearings on October 22, 2020, November 19, 2020, February 2, 2021, June 1, 2021, October 5, 2021, and December 21, 2021. At the December 21, 2021 review hearing, the trial court ordered appellant to serve an additional 12 days in the Franklin County Jail.<sup>4</sup> On December 27, 2021, appellant filed a motion for release. On January 19, 2022, the trial court issued a decision and judgment entry denying appellant's motion as moot as he had already served the 12-day term of incarceration.

{¶ 5} On January 19, 2022, appellant filed a notice of appeal from the December 21, 2021 entry that ordered him to serve 12 days in jail for contempt of court. Appellant also filed a notice of appeal from the trial court's January 19, 2022 final judgment entry denying his motion for release as moot. These matters were consolidated on appeal.

## II. ASSIGNMENTS OF ERROR

{¶ 6} Appellant assigns the following as trial court error:

I. As an evasive recurring matter of public importance, the trial court denied the federally mandated due process and equal procedural protection under Title IV-D of the Social Security Act, 45 C.F.R. 303.6(c)(4-5) and O.A.C. 5101:12-50-50(D), in violation of the Due Process and Equal Protection Clauses of the Ohio and U.S. Constitutions.

II. As an evasive recurring matter of public importance, the trial court abused discretion by swerving from the federally mandated procedural due process protections for Title IV-D civil contempt proceedings, under 45 C.F.R. 303.6(c)(4-5) and O.A.C. 5101:12-50-50(D), in violation of the Due Process Clauses of the Ohio and U.S. Constitutions.

III. As a live matter, the trial court committed an unconstitutional partial taking from the child with the imposition of the suspended civil sentence upon the noncustodial parent.

IV. As a live matter, the trial court was without subject matter jurisdiction to infringe upon the fundamental rights of the child and noncustodial parent by interfering with custody with the imposition of the suspended civil sentence, R., 186.

V. The determination of non-compliance with the civil purge conditions was plain reversible error when the proffered evidence revealed compliance.

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<sup>4</sup> We note that appellant was given five days of jail time credit from July 30, 2021 to August 3, 2021 when he was picked up for a capias in this matter. (Dec. 21, 2021 Jgmt. Entry.)

VI. The purge condition of the continuance order was void, in part, for enjoining future conduct, permitted under the Full Faith and Credit for Child Support Orders Act and 45 C.F.R.

VII. The trial court was divested of jurisdiction while a discretionary appeal regarding the same Title IV-D matter of re-imposing a civil contempt sentence remained before the Supreme Court of Ohio.

VIII. In violation of due process, plain error is evident from the timestamp of electronic filing of the judgment entry and the unverified timestamp of the purge hearing.

IX. Cumulative error by the trial court has prejudiced the Appellant's substantive rights as well as deprived Appellant of fundamentally fair proceedings, from the following errors: defective and imperfect service of process, disability under the Americans with Disabilities Act, 42 U.S.C. 12132 et seq., erroneous adverse inference, denial of full faith and credit of appellate proceedings, improper vacating of a valid order, failure of lifting a *capias*.

(Sic passim.)

### III. LEGAL ANALYSIS

#### A. Appellant's First through Ninth Assignments of Error

{¶ 7} Appellant appeals from the trial court's December 21, 2021 entry ordering him to serve 12 days in jail as well as its January 19, 2022 judgment entry denying his motion for release as moot. In *Craig I*, we set forth the law regarding contempt in Ohio writing:

" 'Contempt is a disregard of, or disobedience to, an order or command of judicial authority.' " *Epitropoulos v. Epitropoulos*, 10th Dist. No. 10AP-877, 2011-Ohio-3701, ¶ 33, quoting *Wesley v. Wesley*, 10th Dist. No. 07AP-206, 2007-Ohio-7006, ¶ 10, citing *Sansom v. Sansom*, 10th Dist. No. 05AP-645, 2006-Ohio-3909. "In a case of civil contempt, [t]he purpose of sanctions, including punishment, is not for the purpose of punishment, but rather for the purpose of encouraging or coercing a party in violation of the decree to comply with the violated provision of the decree for the benefit of the other party.' " *Id.*, quoting *Williamson v. Cooke*, 10th Dist. No. 05AP-936, 2007-Ohio-493, ¶ 11, citing *Pugh v. Pugh*, 15 Ohio St.3d 136, 139, 15 Ohio B. 285, 472 N.E.2d 1085 (1984). " 'Moreover, a sanction for civil contempt must allow the contemptnor [sic] the opportunity to purge himself of the contempt prior to imposition of any punishment.' " (Emphasis

sic.) *Id.*, quoting *Williamson*, citing *O'Brien v. O'Brien*, 5th Dist. No. 2003CA12069, 2004-Ohio-5881. Therefore, so long as the contemnor obeys the trial court's order, "prison sentences are conditional." *Id.*, citing *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253, 416 N.E.2d 610 (1980). When a defendant has made a payment or otherwise purged the contempt, an appeal from the contempt charge is moot. *Id.* at ¶ 34.

*Craig I* at ¶ 21.5

{¶ 8} As an initial matter, we must address whether appellant's appeals are moot. The mootness doctrine is rooted the "case" or "controversy" language in Section 2, Article III of the United States Constitution and in the general notion of judicial restraint. *Everhart v. Coschocton Cty. Mem. Hospital*, 10th Dist. No. 21AP-74, 2022-Ohio-629, ¶ 53, citing *Bradley v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 10AP-567, 2011-Ohio-1388, ¶ 11, quoting *James A. Keller, Inc. v. Flaherty*, 74 Ohio App.3d 788, 791 (10th Dist.1991). A case is deemed moot if " 'they are or have become fictitious, colorable, hypothetical, academic or dead. The distinguishing characteristic of such issues is that they involve no actual genuine, live controversy, the decision of which can definitely affect existing legal relations.' " (Internal quotations and citations omitted.) *Everhart* at ¶ 53, quoting *Doran v. Heartland Bank*, 10th Dist. No. 16AP-586, 2018-Ohio-1811, ¶ 12. It is not the purpose of an appellate court to address purely academic or abstract questions. *Id.* at ¶ 13, citing *James A. Keller, Inc.* at 791. We must dismiss an appeal that is moot if it no longer presents

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<sup>6</sup> In *Craig I*, we set forth the standard of review for a reviewing court when examining a trial court's finding of contempt stating:

"An appellate court will not reverse a trial court's finding of contempt, including the imposition of penalties, absent an abuse of discretion." *Sansom* at ¶ 30, citing *Byron v. Byron*, 10th Dist. No. 03AP-819, 2004-Ohio-2143, ¶ 15. "An abuse of discretion is more than an error of law or judgment; it implies an attitude on the part of the trial court that is unreasonable, unconscionable, or arbitrary." *Id.*, citing *State v. Myers*, 97 Ohio St.3d 335, 2002-Ohio-6658, ¶ 75, 780 N.E.2d 186, citing *State v. Adams*, 62 Ohio St.2d 151, 157, 404 N.E.2d 144 (1980). "Furthermore, when applying this standard of review, an appellate court may not substitute its judgment for that of the trial court." *Id.*, citing *In re Jane Doe I*, 57 Ohio St.3d 135, 137-38, 566 N.E.2d 1181 (1991), citing *Berk v. Matthews*, 53 Ohio St.3d 161, 169, 559 N.E.2d 1301 (1990). "[T]he primary interest involved in a contempt proceeding is the authority and proper functioning of the court, [and therefore] great reliance should be placed upon the discretion of the [court]." *State ex rel. Cincinnati Enquirer v. Hunter*, 138 Ohio St.3d 51, 2013-Ohio-5614, ¶ 29, 3 N.E.3d 179, quoting *Denovchek v. Trumbull Cty. Bd. of Commrs.*, 36 Ohio St.3d 14, 16, 520 N.E.2d 1362 (1988).

*Craig I* at fn. 7.



a justiciable controversy. *Grove City v. Clark*, 10th Dist. No. 01AP-1369, 2002-Ohio-4549, ¶ 11.

¶ 9 In the case sub judice, appellant has appealed from an entry ordering him to serve 12 days in jail as well as from an entry denying his motion for release from jail. There is no dispute that appellant has served the entirety of the 12-day term of incarceration. Because appellant has served the entirety of his sentence, we find appellant's appeal is moot.

¶ 10 Appellant contends that this matter meets the available exceptions to the mootness doctrine. We disagree. This court has recognized two established exceptions to the mootness doctrine, "(1) an issue that is capable of repetition, yet evades review, or (2) a debatable constitutional question yet to be resolved or issues concerning a matter of great public or general interest." *Craig I*, quoting *Rithy Props., Inc. v. Cheeseman*, 10th Dist. No. 15AP-641, 2016-Ohio-1602, ¶ 20, citing *In re L.W.*, 168 Ohio App.3d 613, 2006-Ohio-644, ¶ 12 (10th Dist.). Regarding the first exception, the Supreme Court recently wrote, "[t]he mootness exception for cases that are capable of repetition, yet evading review applies only in exceptional circumstances, when these two factors are both present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again." (Internal citations omitted.) *State ex rel. Burkons v. Beachwood*, \_\_ Ohio St.3d \_\_, 2022-Ohio-748, ¶ 17. Upon review, we are not persuaded that appellant's arguments meet the first exception to the mootness doctrine. As was the case in *Craig I*, "[s]hould appellant be subject to the imposition of more jail time on the remaining days of his suspended 30-day sentence, the circumstances and facts on which a new sentence may be imposed would be different than those forming the basis of appellant's imposed sentence from which he appeals here." *Craig I* at ¶ 27. See also *Id.*, quoting *Catudal v. Catudal*, 10th Dist. No. 12AP-951, 2013-Ohio-2748, ¶ 25 ("the exception for 'capable of repetition, yet evading review' does not apply here because any new stay will necessarily involve a different set of circumstances and determinations than those forming the basis of the first stay"). While appellant received a new sentence, it was based on different facts and circumstances from *Craig I*. Accordingly, we find appellant's argument

as to the applicability of the "capable of repetition, yet evades review" exception unpersuasive.

{¶ 11} We are also not persuaded that the second exception regarding matters of "great public or general interest" applies in this case. This court has stated that any circumstance that involves the application of the "general public or general interest" exception tends to fall within the purview of the Supreme Court rather than for an intermediate court such as this one. *Ashley v. Kevin O'Brien & Assoc. Co., L.P.A.*, 10th Dist. No. 20AP-354, 2022-Ohio-24, ¶ 35, citing *Doe v. Upper Arlington Bd. of Edn.*, 10th Dist. No. 21AP-31, 2021-Ohio-3805, ¶ 8. As such, we decline to apply the "great public or general interest" exception in this case. Appellant has also put forth a series of constitutional arguments. As these arguments concern the purge conditions from the December 21 hearing, we find these arguments are moot as appellant has served the entirety of his 12-day sentence in the Franklin County Jail. Arguendo, even if these claims were not moot, appellant failed to raise these arguments before the trial court at the December 21, 2021 hearing or in his December 27, 2021 motion for release. "In general, an appellate court will not consider any error that an appealing party could have called, but did not call, to the trial court's attention at a time when the trial court could have avoided or corrected the error." *State v. Harris*, 10th Dist. No. 08AP-723, 2009-Ohio-1188, ¶ 3, citing *State v. Childs*, 14 Ohio St.2d 56, paragraph three of the syllabus (1968). As such, appellant is raising these arguments for the first time on appeal. *State v. Trewartha*, 10th Dist. No. 05AP-513, 2006-Ohio-5040, ¶ 28, citing *State v. Awan*, 22 Ohio St.3d 120 (1986), paragraph three of the syllabus. As was the case in *Craig I*, appellant's constitutional arguments were not preserved as they were first asserted on appeal, and we decline to address them at this time. *Id.* at ¶ 27.<sup>6</sup>

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<sup>6</sup> We note that appellant's constitutional arguments are nearly identical to the arguments asserted in *Craig I*. Compare, *supra*, at ¶ 7 with:

- I. The Imposition of the Suspended Sentence Has Adverse Collateral Effects That Are Violative of the Takings Clause of the Fifth Amendment of the United States Constitution and That Impair the Fundamental Rights of the Child and Parent to the Care and Support of the Child as well as Infringe Upon the Right of Freedom from State Action That Jeopardizes That Care and Support under the Due Process Clauses of the Fourteenth Amendment to the U.S. Constitution and Article I, Section 16, of the Ohio Constitution as well as under the Ninth Amendment of the United States Constitution and Article I, Section 20 of the Ohio Constitution.

{¶ 12} Appellant has also argued the trial court lacks personal jurisdiction in this case. We rejected an analogous argument in *Craig I* writing:

Here, after holding the October 31, 2017 evidentiary hearing, at which appellant testified, the magistrate rejected appellant's argument that the registration was invalid. The magistrate found appellant's due process rights had not been violated. The magistrate specifically held "[r]espondent did not prove any of the offenses that are listed in [R.C.] 3115.607(A), that would justify not registering New Jersey's child support order for enforcement in the State of Ohio." (Nov. 6, 2017 Mag.'s Decision at 1.) The magistrate's decision reflects her decision to issue an order to "[r]egister New Jersey's child support order in Ohio for enforcement." (Nov. 6, 2017 Mag.'s Decision at 1.) The same day, the trial court adopted the magistrate's decision. Appellant did not file objections to the magistrate's decision. Appellant also did not appeal the trial court's decision adopting the same. R.C. 3115.608 states: "[c]onfirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration." The New Jersey registered child support order has been confirmed and appellant is now precluded from further contest of the order.

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- A. Substantive Due Process Affords Heightened Protection Against State Action That Infringes Upon Fundamental Rights Secured by the Constitution of the United States.
  - B. The Rights of the Child and Noncustodial Parent Have Protection under Due Process.
  - C. The Child Has a Right to the Care and Support from the Noncustodial Parent as well as a Right of Freedom from State Action That Jeopardizes That Care and Support.
  - D. The Imposition of the Suspended Sentence Had an Adverse Collateral Effect Upon a Source of Income for the Child without Compensation to the Child.
  - E. The Imposition of the Suspended Sentence Infringed upon Joint Legal Custody and Interfered with Interstate Travel.
  - F. Fundamental Parental Rights Are Afforded Protection under the Ninth Amendment of the United States Constitution as well as under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.
  - II. With Applying the Wrong Legal Standard, the Trial Court Erred as a Matter of Law in Imposing the Suspended Sentence When the Defendant Had Substantially Complied with the Purge Conditions Adopted 12/20/2018 and revised 09/09/2019.
    - A. By Preponderance of the Evidence, There Was Compliance with the Purge Conditions.
    - B. As a Matter of Law, the Judge Applied the Wrong Standard for the Burden of Proof.
    - C. The Never-Journalized Oral Order Was Not a Valid Purge Condition.
    - D. This Is a Live Matter, with a Constitutional Question, Capable of Repetition that Evades Review.
  - III. Cumulative Error by the Trial Court Infringed Upon Substantive Rights and Prejudiced the Proceedings Thereby Denying Fundamentally Fair Hearings.

(Sic passim.) (Sept. 10, 2020 Appellant's Brief.)

\* \* \*

If we were to analyze the procedural history and facts within the framework appellant urges, we would find the contest filed by appellant on May 3, 2017 did not present any specific affirmative defenses, including insufficiency of service of process or lack of personal jurisdiction, contrary to the mandates of Civ.R. 12(B). Therefore, appellant waived the defense of insufficient service and lack of personal jurisdiction. Civ.R. 12(H). Moreover, appellant filed his contest to defend against the ROFO and had the opportunity to participate in the October 31, 2017 proceedings regarding his contest of the ROFO; therefore, appellant was not deprived of procedural due process by the trial court in registering the ROFO. *See Kvinta* at ¶ 62.

Appellant acknowledges the potential for waiver but asserts his participation in the October 31, 2017 hearing was not a waiver of the defense of insufficiency of service of process. Even assuming, arguendo, it was not, we have held: "a defendant is considered to have waived his defense of lack of personal jurisdiction when his conduct does not reflect a *continuing* objection to the power of the court to act over the defendant's person." (Emphasis added.) *Harris* at ¶ 10, citing *Nichols, Rogers & Knipper LLP v. Warren*, 2d Dist. No. 18917, 2002-Ohio-107 (Jan. 11, 2002). Appellant did not assert affirmative defenses in accord with Civ.R. 12 when he filed his contest, nor did he continue objections, if any, to sufficiency of service after the magistrate registered the ROFO by filing an objection to the November 6, 2017 magistrate's decision or appealing the trial court's adoption of the same. *See* Loc.R. 32(C) of the Court of Common Pleas of Franklin County, Domestic Relations Division and Juvenile Branch, Civ.R. 12(B)(2) and (B)(5), and 53(D)(3)(b); *See also Lundeen v. Turner*, \_\_\_ Ohio St.3d \_\_\_, 2021-Ohio-1533, ¶ 22. Thereafter, appellant, through counsel, requested discovery related to FCCSEA's contempt filing, appeared before the trial court for a hearing on FCCSEA's contempt proceeding and appeared before the trial court in numerous review hearings. Not once during appellant's participation in the aforementioned trial court proceedings did he raise argument related to insufficiency of service of process.

*Craig I* at ¶ 19, fn. 6.

{¶ 13} Upon review, even after our ruling in *Craig I*, appellant failed to raise these jurisdictional arguments at any of the review hearings. Accordingly, on the authority of *Craig I*, we find appellant's personal jurisdiction argument without merit.

{¶ 14} Appellant contends that because he filed an appeal to the Supreme Court, the trial court did not have jurisdiction to order him to serve an additional 12 days in the Franklin County Jail.

{¶ 15} Simultaneous with the filing of a notice of appeal, "an appellant may seek an emergency motion for a stay of execution of the contempt punishment." *State ex rel. Hassink v. McFaul*, 8th Dist. No. 77400, 1999 Ohio App. LEXIS 6357 (Dec. 21, 1999), citing R.C. 2705.09; App.R. 7. App.R. 7(A) requires that a request for a stay must be first made with the trial court unless there is a justifiable reason for not doing so. Moreover, R.C. 2705.09 states "[a]ppeal proceedings shall not suspend execution of the order or judgment until the person in contempt files a bond in the court rendering the judgment, or in the court or before the officer making the order, payable to the state, with sureties to the acceptance of the clerk of that court, in an amount fixed by the reviewing court, or a judge thereof, conditioned that if judgment is rendered against such person he will abide by and perform the order or judgment." In the instant case, we rendered our decision in *Craig I* on June 29, 2021. Appellant filed an appeal to the Supreme Court on September 7, 2021. On November 23, 2021, the Supreme Court declined to hear appellant's appeal in the case. *See C.S. v. G.T.*, 165 Ohio St.3d 1456, 2021-Ohio-4033 (Nov. 23, 2021)<sup>7</sup>. Appellant failed to file a motion to stay with any court of the underlying order. While the trial court "lacks jurisdiction to execute a judgment or contempt proceedings regarding the judgment if there is a stay of the judgment pending appeal," there was no stay of the judgment in this case. *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 570, 2000-Ohio-248 (2000), citing *In re Kessler*, 90 Ohio App.3d 231 (6th Dist.1993); *see also Curl*, citing *Oatey v. Oatey*, 83 Ohio App.3d 251, 257 (8th Dist.1992) ("the mere filing of a notice of appeal from the order \* \* \* does not divest the \* \* \* court of jurisdiction to enforce an interlocutory or final order pending appeal unless the party is granted a stay of execution of the order." (Emphasis removed.) Absent such a stay, the trial court retains jurisdiction to enforce its orders. Moreover, regardless of whether a stay was in place for the order at issue in *Craig I*, this case concerns two separate orders based on difference facts and circumstances. Accordingly, appellant's argument regarding lack of jurisdiction is without merit.

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<sup>7</sup> The Supreme Court denied appellant's motion for reconsideration on February 1, 2022.

{¶ 16} Appellant argues that by filing his motion for release he demonstrated that he had "no intention to acquiesce to imposed civil sentence and preserved the same matters for appellate review." (Appellant's Brief at 65.) Appellant also argues that, during the December 21, 2021 hearing, appellant "requested a stay by asking the Judge for a delay of enforcement while Appellant persisted with seeking employment at the Catholic high school in Jersey City, New Jersey." (Appellant's Brief at 65-66.) We disagree. Appellant failed to file a motion to stay of the trial court proceeding. A vague request to delay reporting in anticipation of a call from a potential employer is not equivalent to filing a motion to stay pending appeal.<sup>8</sup>

#### IV. CONCLUSION

{¶ 17} Having overruled deemed appellant's jurisdiction argument and appellant's appeal to be moot, this appeal is dismissed.

*Appeal dismissed.*

KLATT, and SADLER, JJ., concur.

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<sup>8</sup> Appellant contends that this court lacks subject matter jurisdiction to interfere with the New Jersey court's reunification therapy. R.C. 2151.23 defines the subject matter jurisdiction of juvenile courts in Ohio. Upon review, we find that this court has jurisdiction on the child support order. While appellant now claims on appeal that New Jersey has exclusive jurisdiction in this matter, counsel for appellant conceded at the October 22, 2020 hearing that "[appellant's] order is enforced here, it's not modifiable by this Court, so he had to pursue modification back in New Jersey, which he did." (Oct. 22, 2020 Hearing at 4.) In *Craig I*, we explained:

Here, the New Jersey court is the "issuing tribunal," and the state of Ohio, Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is the "registering tribunal." Pursuant to R.C. 3115.603(A), once the New Jersey child support order to which appellant was subject was filed in the Ohio trial court, it was registered. R.C. 3115.605(A) states in relevant part that "[w]hen a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of this state shall *notify* the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order." (Emphasis added.) Therefore, once the New Jersey child support order was registered with the trial court, the trial court was required to notify appellant, the non-registering party. As noted above, the record reveals the trial court notified appellant.

*Craig I* at ¶ 18.

Appendix H

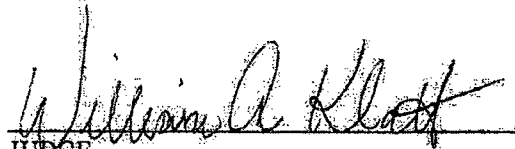
IN THE COURT OF APPEALS OF OHIO


TENTH APPELLATE DISTRICT


Simon Craig, :  
Plaintiff-Appellee, :  
v. : No. 22AP-54  
Terrence Gilchrist, : (ACCELERATED CALENDAR)  
Defendant-Appellant. :

JOURNAL ENTRY OF DISMISSAL

It appearing that the appeal docketed under case No. 22AP-54 is identical to the appeal docketed under case No. 22AP-52, the appeal docketed under case No. 22AP-54 is hereby *sua sponte* dismissed as duplicative. The clerk shall note the docket.

  
JUDGE

  
JUDGE

  
JUDGE dv

cc: Clerk, Court of Appeals

Franklin County Ohio Court of Appeals Clerk of Courts- 2022 Feb 02 12:43 PM-22AP000054

# Appendix I

## Timestamps of Audio-Files from Civil Purge Hearings, December 21, 2021

Civil Purge Hearing: F.L.			
Start and Finish Times	Duration (Minutes)	Duration (Seconds)	File Size
10:02:30 a.m. to 10:07:30 a.m.	5 minutes	600 seconds	4,555 KB
10:07:31 a.m. to 10:09:25 a.m.	1 minute 54 seconds	114 seconds	4,555 KB
10:09:44 a.m. to 10:13:23 a.m.	3 minutes 39 seconds	219 seconds	3,325 KB
Short Recess between Hearings			
Civil Purge Hearing: C.S. v. G.T.			
Start and Finish Times	Duration (Minutes)	Duration (Seconds)	File Size
10:19:32 a.m. to 10:24:33 a.m.	5 minutes	600 seconds	4,555 KB
10:24:32 a.m. to 10:29:33 a.m.	5 minutes	600 seconds	4,555 KB
10:29:33 a.m. to 10:32:10 a.m.	2 minutes 37 seconds	157 seconds	2,384 KB

Reviewing

F.T.R. since 2003

10:24:33 a.m.

10:19:32 a.m. Announced hearing  
to 10:24:32 4,555 KB Call to order.

10:24:33

29:33

10:29:33

10:32:10 2,384 KB

Timed to US Government Tick and Tock  
- computer synced with server

9:50, 10:07 10:09 10:13

Ami 8:58:50 a.m.

10:09:44 10:07:31

10:13:23 (3,325 KB) 10:09:25 4,555 KB  
3,325 KB

- drive upon computer

multiple microphone channels  
- enables clear transcript on question

10:02:30

10:07:30 4,555 KB

Log sheets - in the room for hearing  
- Timed to when they type the report

My case - 10:13:23

Preceding 10:02:48 then 10:11:17

File one 9:49:11 to 9:50:00  
- 10:09:25  
- 10:09:25  
- 10:09:25  
- 10:09:25

Time stamps - encrypted  
- when button is pushed  
- no record from non-synched devices  
- local protection, network protection, firewall, server