

No. 4-26-0842

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

GWENDOLYN M. THOMAS,

Petitioner-Appellee,

v.

LUKE A. THOMAS

Respondent-Appellant.

Appeal from: Cass County

Circuit Number: Eighth

Case No: 2022DC15

Trial Judge: Hon. Holly J. Henze

**APPELLANT’S MOTION TO STRIKE EX PARTE TRIAL JUDGE
AFFIDAVIT FROM THE RECORD ON APPEAL, OR IN THE
ALTERNATIVE, FOR LEAVE TO FILE RESPONSIVE AFFIDAVIT**

NOW COMES the Respondent-Appellant, LUKE A. THOMAS, *pro se*, and pursuant to Illinois Supreme Court Rule 361 and Rule 329, respectfully moves this Honorable Court for an Order striking from the Record on Appeal the *ex parte* affidavit executed and inserted into the record by the trial judge, the Honorable Holly J. Henze. In the alternative, Appellant requests leave to file a responsive counter-affidavit. In support whereof, Appellant states as follows:

I. PROCEDURAL BACKGROUND

1. On July 23, 2026, Appellant filed a Notice of Appeal seeking review of orders entered in Cass County Circuit Court Case No. 2022-DC-15, including rulings involving the recusal, substitution, and impartiality of the trial judge.
2. Subsequent to the filing of the Notice of Appeal, and prior to the transmission of the official Record on Appeal by the Circuit Clerk, the trial judge, Judge Holly J. Henze, executed an affidavit detailing her personal recollections and factual assertions regarding contested matters in the underlying litigation.
3. This affidavit was placed into the circuit court file and transmitted as part of the Record on Appeal without prior notice to Appellant, without service of process under Illinois Supreme Court Rule 11, and without an opportunity for Appellant to object, challenge, or counter the factual assertions contained therein.
4. **On September 25, 2026, Appellant provided Appellee with true and correct copies of this Motion to Strike and Proposed Order in accordance with Local Rule 104(a). Appellee has not responded despite being requested to do so prior to September 26, 2026 at 3:00 p.m. Therefore, Appellant has been unable to ascertain whether Appellee intends to oppose this Motion.**

II. ARGUMENT

A. The *Ex Parte* Submission Violates Due Process and Supreme Court Rules Governing Notice and Record Corrections.

4. Under Illinois Supreme Court Rule 329, material omissions or inaccuracies in the record may be corrected, but only upon agreement of the parties, or by the trial or reviewing court after notice and a hearing. Rule 329 does not authorize a trial judge to

unilaterally supplement an appellate record *ex parte* with self-serving testimonial evidence after a notice of appeal has been filed. 5. Due process of law requires notice and a meaningful opportunity to be heard. By inserting a factual affidavit into the record without serving notice upon Appellant, the trial court circumvented the Illinois Code of Civil Procedure and Illinois Supreme Court Rules 11 and 12, depriving Appellant of the right to conduct adversarial testing.

B. A Challenged Trial Judge Cannot Unilaterally Inject Uncontested Testimony into an Appellate Record.

6. The impartiality and conduct of the trial judge constitute core issues raised in this appeal. Allowing a challenged judicial officer to inject unverified, un-cross-examined testamentary statements into the record on appeal creates an impermissible structural defect and prejudices Appellant's right to an impartial review.

7. An appellate court's review is strictly confined to the legitimate record created during the trial court proceedings. An *ex parte* post-judgment affidavit created by a judge outside the presence of the parties is not a judicial record of proceedings; it is unsworn or non-adversarial testimony that has no place in an appellate file.

III. ALTERNATIVE PRAYER FOR LEAVE TO FILE RESPONSIVE

AFFIDAVIT

8. Should this Court decline to strike the subject affidavit, fundamental fairness requires that Appellant be granted leave to submit a responsive counter-affidavit.
9. Leaving Judge Henze's *ex parte* statements uncontradicted in the Record on Appeal creates a one-sided factual narrative that severely prejudices Appellant's presentation of his appeal.

PRAYER FOR RELIEF

WHEREFORE, Respondent-Appellant, LUKE A. THOMAS, respectfully requests that this Court enter an Order:

1. **GRANTING** Appellant's Motion to Strike Judge Holly J. Henze's affidavit from the Record on Appeal;
2. **DIRECTING** the Clerk of the Appellate Court to strike said affidavit and disregard any reference to it in Appellee's briefs; or
3. **IN THE ALTERNATIVE**, granting Appellant twenty-one (21) days to file a responsive counter-affidavit to be incorporated into the record; and
4. **STAY/EXTEND** previously ordered deadlines in accordance with the time necessary for ruling on this motion and such other appropriately calculated extension based on the relief granted; and
5. **GRANTING** such other and further relief as this Court deems just and proper.

Respectfully submitted,

LUKE A. THOMAS, *Respondent-Appellant, pro se*

Respectfully submitted,

By: /s/ Luke A. Thomas

LUKE A. THOMAS,

Appellant/Respondent, *pro se*

Email: thomaslitigation2022@gmail.com

Phone: 507-910-1605

Illinois ARDC No.: 6278591

CERTIFICATION Fourth District Local Rule 104(a), after attempts to confer with Appellee, Movant does not know whether the opposing party intends to file an objection.

Dated: September 25, 2026

By: /s/ Luke A. Thomas

LUKE A. THOMAS,
Appellant/Respondent, *pro se*
Email: thomaslitigation2022@gmail.com
ARDC No. 6278591

CERTIFICATE OF SERVICE

I hereby certify that on this 25th Day of September, 2026, I served a copy of the foregoing **Motion** upon the following person:

Gwendolyn M. Thomas (Appellee, Petitioner)

Email: gwenthomaslaw@gmail.com

By: Electronic email to the above address, this 25th day of September, 2026, at approximately 10:00 p.m.

The type of service made is specifically noted as required by Fourth District Local Rule 109(b).

By: /s/ Luke A. Thomas
LUKE A. THOMAS, Appellant, *pro se*
Email: thomaslitigation2022@gmail.com
Phone: 507-910-1605
Illinois ARDC No.: 6278591

NOTICE OF FILING AND PROOF OF SERVICE

TO: Gwendolyn M. Thomas, Appellee, *Pro Se*
Gwendolyn M. Thomas (Appellee, Petitioner)

Email: gwenthomaslaw@gmail.com

PLEASE TAKE NOTICE that on September 25, 2026, I electronically filed the **Appellant's Motion to Strike Ex Parte Trial Judge Affidavit from the Record on Appeal, or in the Alternative, for Leave to File Responsive Affidavit** together with proposed Order with the Clerk of the Appellate Court, Fourth Judicial District, via an approved electronic filing service provider (EFSP)

PROOF OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. I served this Notice and the accompanying Motion upon the above-named party/counsel by:

[X] E-Filing System: Transmitting the documents via the Court's approved electronic filing system, which automatically serves registered users of record on September 25, 2026.

[X] Email: Additionally transmitting a copy via electronic mail to the email address(es) listed above on September 25, 2026.

Respectfully submitted,

By: /s/ Luke A. Thomas
LUKE A. THOMAS, Appellant, pro se
Email: thomaslitigation2022@gmail.com
Phone: 507-910-1605
Illinois ARDC No.: 6278591