

LEVENGOOD V. TRANSFUEL, INC., APPELLEE; LEVENGOOD ET AL., APPELLANTS.

[Cite as *Levengood v. Transfuel, Inc.* (1996), \_\_\_ Ohio St.3d \_\_\_\_.]

*Motions for discretionary appeal and for fees and costs denied.*

(No. 96-93 -- Submitted May 7, 1996 -- Decided June 19, 1996.)

APPEAL from the Court of Appeals for Tuscarawas County, No.  
95AP060044.

---

*Climaco, Climaco, Seminatore, Lefkowitz & Garofoli Co., L.P.A.,*

*Richard M. Knoth and Jayne L. Jakubaitis*, for appellee.

*Joseph I. Tripodi Co., L.P.A., and Joseph I. Tripodi; Charles E.*

*Lorenz II*, for appellants, Tim Levengood et al.

---

The cause is before the court on a motion for discretionary appeal and on a motion by Transfuel, Inc. for fees and costs. The motions are denied.

DOUGLAS, RESNICK, F., E. SWEENEY and PFEIFER, JJ., concur.

MOYER, C.J., and COOK, J., dissent.

STRATTON, J., not participating.

COOK, J., dissenting. I respectfully dissent from the court's denial of the motion for costs and fees. Appellants have filed an appeal raising this identical issue on at least three different occasions. Each time, the Court of Appeals for the Fifth District has dismissed the appeal for lack of a final appealable order. This court has previously declined to accept jurisdiction of this case. *Levengood v. Levengood* (1995), 74 Ohio St.3d 1475, 647 N.E.2d 783. The memorandum in support of jurisdiction filed here is simply a copy of the one filed when we declined jurisdiction. Based upon those repeated and frivolous filings, I would award defendant-appellees, Transfuel, Inc., costs and fees.

MOYER, C.J., concurs in the foregoing dissenting opinion.