

I. APPELLANTS' PROPOSITION OF LAW NO. 1 IS NOT ACCURATE AND IS NOT SUPPORTED BY THE FACTS IN THE RECORD.

Appellants' Motion for Reconsideration should be denied because the record contains objectively discernable reasons for the jury to discount or disregard the testimony of Appellant's expert. The Fifth District Court of Appeals correctly applied the established law set forth in *State v. Brown* (1983), 5 Ohio State 3d 133. The case cited by Appellants in this Motion for Reconsideration provides no support for the acceptance of jurisdiction in this matter. In fact, nowhere in the decision or in the submissions of the parties in *Bryan-Wollman* is there any reference to *Brown*. Appellants' main argument in the appellate court was that the trial court failed to follow the law set forth in *Brown*.

In Proposition of Law No. 1, Appellants asked this Court to accept jurisdiction to determine "whether a jury is free to disregard an expert's unrebutted standard of care testimony." Appellants asserted the same proposition of law in their Memorandum in Support of Jurisdiction. The record contains expert opinions and facts which allowed the jury to determine that Appellants' expert was not believable. The Fifth District Court of Appeals properly found that Air Experts did not have to present an identical expert to offer directly contradictory opinion evidence, but that it merely needed to show that there were objectively discernable reasons for the jury to discount or disregard a portion of the testimony of Mr. Ozinga, appellants' expert. As Air Experts has indicated before, there were many objectively discernable reasons which led the jury to reject the testimony of Mr. Ozinga.

Two licensed HVAC contractors provided testimony which contradicted Mr. Ozinga's testimony that a technician must physically check all plugs and outlets even

when the complaint is for no cooling and the equipment, a condensate pump, seems to be operating. Mr. Fling and Mr. Martel, both certified HVAC contractors like Mr. Ozinga, testified that the better practice was to hard wire condensate pumps into the air handling unit so that they cannot be unplugged. Mr. Ozinga, however, testified that even if the pump is working, a technician must trace the power cord to where it is plugged in so that he can disconnect the power if the pump malfunctions when he tests it by pouring water in it. He did not testify that the technician should trace the wire to determine if the plug was safe. Obviously, this testimony by similarly qualified experts is contradictory and provides a basis for the jury to disregard Mr. Ozinga's testimony.

More importantly, Air Experts presented the testimony of Ralph Hoffman, who is a registered professional engineer with a specialty in electrical engineering. Mr. Hoffman has designed HVAC systems as part of his work in the design of water treatment plants (Transcript, p. 589), and he has done troubleshooting of pump operation, and has tested pumps for pump manufacturers to see if they worked properly. (Transcript, p. 876). Most importantly, however, is that Mr. Hoffman testified, **without objection:**

Q. Mr. Hoffman, as an engineer, if a pump operates and pumps water for you, what information concerning whether or not the pump will work would you expect to get from checking the power supply to the pump? What else will that tell you about whether or not it would work?

A. For a pump this simple, I can't think of any useful purpose in tracing the wire back to its power source if it's operating.

(Transcript, p. 915).

In this case, it is undisputed that the pump worked at the time of the accident and that it continued to work afterwards. There was no need for a technician to trace

the power cord back to an electrical outlet according to two of the three certified HVAC contractors who testified. Additionally, a registered professional engineer testified that there was no purpose served by tracing the wire. All of this testimony provides reasonably discernable reasons for the jury to disregard Mr. Ozinga's testimony, and the jury did so.

II. THE CASE OF BRYAN-WOLLMAN v. DOMONKOS, 2006-Ohio-1201, IS EASILY DISTINGUISHABLE FROM THIS CASE AND DOES NOT SUPPORT THE ACCEPTANCE OF JURISDICTION OVER THIS CASE.

Appellants assert that this Court's acceptance of jurisdiction over the Bryan-Wollman case somehow compels the acceptance of jurisdiction over this case. This case, however, is easily distinguishable from *Bryan-Wollman*.

Bryan-Wollman deals only with the issue of damages. The parties stipulated negligence before trial. This is not the case in the *Heintzelman* case, where the issue of liability was contested. Additionally, both sides in *Bryan-Wollman* agreed that there were some damages. The problem in the *Bryan-Wollman* case was that the jury awarded a defense verdict in spite of the fact that both plaintiff's and defendant's experts agreed that there were at least some damages.

In the *Heintzelman* case, both sides presented experts and both sides presented facts and there was no agreement on liability and there was no stipulation between the parties on liability. Therefore, the jury had to consider all of the evidence from all sources and found objectively discernable reasons to determine that Air Experts was not liable for the death of Mr. Heintzelman. The *Heintzelman* case is nothing like the Bryan-Wollman case. Appellants state that the Air Experts' technician admitted that if

he saw the outlet in the attic he should have warned that it was dangerous. This is not an admission of any liability. The evidence was undisputed that any outlet in that attic was most likely buried under insulation and not visible to anyone at any time. Further, the technician had no recollection of the Heintzelman home and the attic whatsoever. He made his one and only service call there nearly a year before the accident, and he made numerous service calls every work day.

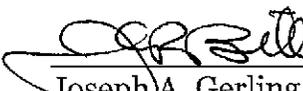
In the *Heintzelman* case, the jury determined that Air Experts was not responsible, but that Appellee Martel was responsible. Therefore, the jury did not completely ignore the liability evidence it had before it, but found objectionably discernable reasons to determine that Martel was the one liable and not Air Experts.

This case involves the application of established, well-settled legal standards to the particular facts of this case. The Court properly found that the case was not one of public and great general interest.

For all of these reasons, the Court should not reconsider its decision and should not accept this case for review. Air Experts respectfully requests that the Court deny Appellants' Motion for Reconsideration.

Respectfully submitted,

LANE, ALTON & HORST, LLC

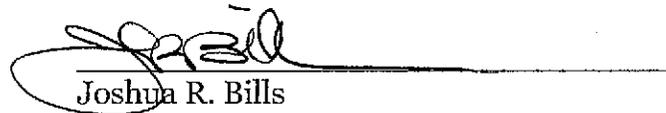

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served on the following counsel of record via ordinary U.S. mail, postage prepaid, this 22nd day of February 2007.

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