

07-0367

IN THE SUPREME COURT OF OHIO

SHIRLEY J. GARMON,

APPELLANT

V.

ANNA M. MILLS, ET AL.,

APPELLEES

OHIO SUPREME COURT NO:

ON APPEAL FROM THE LUCAS
COUNTY COURT OF APPEALS
SIXTH APPELLATE DISTRICT
CASE NO.: L-06-1173

MEMORANDUM IN SUPPORT OF JURISDICTION
OF PLAINTIFF-APPELLANT S. GARMON.

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FILED

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MARCIA J MENGEL, CLERK
SUPREME COURT OF OHIO

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COURT OF APPEALS, SIXTH APPELLATE DISTRICT, OPINION AND JOURNAL ENTRY, DATED JANUARY 11, 2007, DISMISSED THE APPEAL

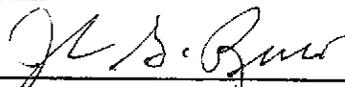
Respectfully submitted,



John G. Rust
Attorney for Appellant
Shirley J. Garmon

CERTIFICATE OF SERVICE

This is to certify that a copy of this Memorandum In Support Of Jurisdiction, was sent by ordinary U.S. Mail to Gregory B. Denny, Esq., and Mark S. Barnes, Esq., Bugbee & Conkle, LLP, 405 Madison Avenue, Suite 1300, Toledo, OH 43604 and Carolyn S. Bowe, Esq., Assistant Attorney General, One Seagate Center, Suite 2150, Toledo, OH 43604-1551, Attorney For Administrator, Bureau Of Worker's Compensation this 19th day of October, 2006.



John G. Rust

EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST
AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

The record has evidences upon which each of the questions is based.

1. If an Adjuster for a claimant insured, who has been injured negligently, by another person also insured by the same insurance company, under a duty, when the Adjuster learns that the claimant wants some medical bills incurred from injuries in an automobile collision, with a person also insured by the same company for which the Adjuster works, under a duty to tell the injured person, who has coverage up to \$5,000.00 under her Medical Payments Coverage, and the Adjuster knows the fellow claimant is dealing with Third Party liability claims against the claimant's same insurance company, then under a duty to tell the claimant who appears not to be informed of all the coverage and claims procedures, that "As to your coverage under medical payments in your policy, you can collect for all medical bills up to \$5,000.00, and you won't have to sign a Release for any such recover, but you will have to sign a Release to your fellow insured under his Third Party liability coverage?"

A. Would such a duty arise if the Medical Payments Adjuster knows that the Third Party Liability Adjuster will require the claimant to sign a Release to the fellow insured if that Third Party Adjuster is going to pay any money to take care of the claimant's medical bills?

Would that duty arise

B. /if claimant, under the Medical Payments Coverage, appears to be ignorant of the medical payments coverage, or just not informed of the claimant's medical pay or benefits options not requiring her to sign a Release to the fellow insured who injured the claimant?

C. If it becomes known to the Medical Payments Adjuster, that the claimant hasn't been able to get an Attorney to take her case, or that the claimant appears not to understand that the claimant is now dealing with the Liability Adjuster, and that claimant will have to sign a Release of all claims of the claimant, to collect from the Liability Adjuster, is there a duty on the Medical Payment Adjuster

to inform the medical payment insured that he/she, won't have to sign a General Release?

D. In just every case where now the claimant is dealing with the same company Liability Adjuster, and the First Party Adjuster knows that the Third Party Claimant won't get any money, unless he signs a Release cutting out all his or her claims, if he is ever going to get any money from the Liability Adjuster, should First Party Adjuster so warn the First Party Claimant?

2. Is every Adjuster for State Farm, in our case, under a Good Faith Duty to "LEVEL" with the claimant, who also has medical payments coverage, and if that medical payments, of the Third Party Adjuster, in Truth, just believes the claimant was not hurt any in the collision, then is the Liability Adjuster, and also the Medical Payments Adjuster, under a duty to tell the claimant, "Right now as an Adjuster, you haven't convinced me you were hurt any by the collision with the fellow insured, but if you think that you were hurt in that collision, what you should do is to fill out an application, and you state where you hurt, how much, and when you first sensed your pain, and then also, you should send us the medical records from your Doctor, and he or she should give in a report, why your Doctor which says you were hurt, and describe how and for how long you were hurt?"

4. Just what triggers any Adjuster to tell the insured claimant under Medical Payments Coverage, or under Liability Coverage, of what to do, to get the claimant's claim to the point where it will have to be investigated by the Insurance Company?

5. Does the fact the Medical Payments Adjuster need to inquire by talking to the insured claimant, who says he/she has been injured by a fellow insured, so the Medical Payment Adjuster can tell if the claimant seem to be sincere, and/or appears uninformed on Medical Payments Coverage?

6. Is the Third Party Adjuster under a duty to "LEVEL" with the Third Party Claimant if in truth, Adjuster Michelle Corpuz Yost just thought Mrs. Garmon hadn't suffered any injury whatsoever?

7. What is the Judge's Duty in determining what either Dr. Ozrovitz of Health Plus, or Dr. Horowitz, or both, should have been allowed to testify?

7. Plaintiff wasn't going to be able to admit any medical records before the Stacie Keaton collision, and therefore, Dr. Ozrovitz should be allowed to testify?

7A. Since the Health Plus records were not available from either before or after the Anna Mills collision of November 28, 1998, wouldn't Plaintiff have a right to ask for the only Health Plus Doctor available to testify? A Due Process right? Of what import, that neither Plaintiff nor Defendant could be assured that Dr. Ozrovitz would help or hurt either side?

8. Of what relevance that Plaintiff's Counsel said they had been having to spend all their time fighting the Release, which State Farm kept claiming for a long time?

9. Shouldn't a Court allow the Plaintiff, as a matter of Due Process, be allowed to take Dr. Ozrovitz's Deposition, even at the last week?

10. Was Adjuster Valore, Medical Payments Adjuster, under a duty sometime to advise of Mrs. Garmon's options - to be informed of the payments of her medical bills, under "Med Pay", that Mrs. Garmon didn't have to sign any Release to Stacie Keaton-Goodwin, as Judge Doneghy said Mr. Valore didn't have to advise Mrs. Garmon of her legal "rights" were, but, by Justice Holmes, Mr. Valore was under a duty to advise Mrs. Garmon of all her options, different benefits, her different coverages, and what and how each paid? And did the the Trial Court error/^{on}this Key point?

STATEMENT OF THE CASE AND FACTS

This Action involves a collision between Shirley Garmon's car, the first collision being with one being driven by Defendant Anna Mills, at the Best Buy business area, east of Secor Road, and south from Monroe Street. In the first collision, Plaintiff Garmon was going westerly, toward Secor, and Defendant Anna Mills was going southerly, toward the Best Buy building complex. When Defendant Mills approached the passageway in which Plaintiff was, Defendant Mills ignored the "Stop" sign and struck Plaintiff's vehicle, causing some injury.

In the second collision, Plaintiff Shirley Garmon was going easterly on Laskey Road, in Toledo, passing the entrance to the Miracle Mile Shopping Center. Defendant Stacie Goodwin, in the westbound lane, the north half of the street being 2 lanes from Plaintiff's lane, then Defendant Stacie L. Goodwin then, without notice, made a left turn directly at, and some to the front of Plaintiff Garmon's east bound car, then, Defendant Goodwin pushed Plaintiff's car, roughly 20 feet to the south, from the entrance streets into the Miracle Mile area. In this first Action, Stacie L. Goodwin, an insured of the State Farm Insurance Company, as was the Plaintiff, represented by Attorney Cormac B. DeLaney, filed Interrogatories, Requests For Documents, Requests For Admissions, and a Motion For Summary Judgment, on the grounds that Plaintiff, on June 8, 2000, signed a General Release in the presence of State Farm Adjuster Michelle Corpus Yost, in the amount of \$3,904.00, plus payment of 2 office treatments by Doctor Mather, on the Plaintiff. A Judgment was rendered unopposed in favor of Defendant Stacie L. Goodwin, State Farm's insured. Then, at a Pretrial Conference, Plaintiff's Counsel asked that that Judgment be Vacated, and on October 11, 2001, the Court granted

the request to vacate the Judgment Entry granting Summary Judgment for Defendant Stacie L. Goodwin. Plaintiff Shirley Garmon's Counsel then filed on August 26, 2002, "Response To Defendant Keeton's Motion For Summary Judgment", of Release signed by Plaintiff. Thereafter, on September 4, 2002, Plaintiff filed her Notice Of Dismissal Without Prejudice and the date of Dismissal of that first Action was then November 4, 2002. The first Action, with it's length of Docket Entries, or all the Docket Entries, is referred to,

SECOND ACTION, FILED, DULY,
ON SEPTEMBER 3, 2003, WITH
STATE FARM ADDED AS DEFENDANT.

This second refiled Action, the Parties were served, immediately, with Answeres filed, on November 17, 2003, Defendant Goodwin, represented by Attorney DeLaney, filed Request For Interrogatories, and Documents on October 15, 2003 and Defendant State Farm, who was joined as a Party Defendant filed its Answer to Plaintiff's Complaint, and to Vacate and Set Aside the Relief in Equity, and on the Second Cause Of Action against State Farm for Damages.

Defendant Mills was served in the Second Cause Of Action, and her Attorney, on several Discovery Requests, on December 22, 2003, Plaintiff was ordered to respond to Defendant Mill's Discovery within 30 days. On March 1, 2004, Defendant State Farm, by Attorney Matthew J. Rohrbacher, filed a Motion For Summary Judgment, stating the aforesaid Release signed by Plaintiff on June 8, 2000. On March 5, 2004, Defendant Keeton, by Attorney DeLaney, filed his Motion For Summary Judgment on the said Release. On March 15, 2004, the Court granted Plaintiff's Motion For Leave To File Her Answers To

Defendants Keeton and State Farm's Requests For Admissions.

On April 19, 2004, Defendant State Farm filed a Motion for Oral Argument on State Farm's Motion For Summary Judgment. On April 26, 2004, State Farm filed one of its many Memorandums in Opposition To Plaintiff's Request For Extension Of Time. On April 20, 2004, Plaintiff filed her Discovery Answers and Responses, and her Memorandum Of Law Opposing Summary Judgment. On April 22, 2004, State Farm filed its Reply To Plaintiff's Memorandum Opposing Summary Judgment, and likewise, on June 23, 2004, Defendant Stacie Keeton filed her Reply to her Motion For Summary Judgment. On August 27, 2004, Plaintiff filed the Affidavit of Dr. Mather, giving his Medical Opinion Within Reasonable Medical Certainty, that Plaintiff suffered pain and suffering from the aforesaid 2 collisions, one with Defendant Mills and 1 with Defendant Keeton.

The filings are so many, by each Party, as both State Farm, and Stacie Keeton Goodwin filed objections to every request for extension of time. It should be pointed out, that from the very first Action, once that Attorney DeLaney filed his Motion For Summary Judgment on the basis of the Release signed by the Plaintiff, it took this Counsel much more time to prepare a response to Summary Judgment, because his memory was not like it used to be, and much time had to be spend, filings had to be located, and research had to be done, and it took him much longer to prepare a response, although he was working hard all the time. spending and working over 8 hours a day.

On June 14, 2005, the Court issued its Order that State Farm's Motion For Summary Judgment was Denied, likewise, as to Defendant Keeton's Motion For Summary Judgment was Denied, and on June 14, 2005, in the same Order, Defendant Anna Mills Motion For Failure To Respond To Discovery was Dismissed, With Prejudice. On June 22, 2005, State Farm filed a Motion For Reconsideration of the Denial of their Motion

For Summary Judgment. On August 2, 2005, Plaintiff filed a Motion For An Extension To August 5, 2005, to file a Response to State Farm's Motion In Limine to ban Punitive Damages. On August 10, 2005, the Court filed its Opinion denying State Farm's Motion For Summary Judgment. On August 24, 2005, State Farm filed in its Motion In Limine to ban Plaintiff from claiming Bad Faith. This was the first Action in which this Counsel dealt with the Doctrine of the Duty on the Insurance Company of Acting In Good Faith. Various Motions for Extensions were filed by Plaintiff, because much research had to be done, and this Counsel couldn't find the cases dealing with that Doctrine, dealing with Defendant Attorney Rohrbacher's and in time did send the Plaintiff, a series of cases, charging Adjuster Michelle Corpuz Yost, in handling the Plaintiff's Claim against Stacie Keeton-Goodwin, the Third Party Claim, and that there was no Bad Faith nor Bad Faith Doctrine applying to that, because that was a Third Party Claim, made against Defendant Goodwin, an insured of State Farm, just like Plaintiff was an insured of State Farm. On October 19, 2005, Plaintiff served his Notice Of Deposition of Plaintiff's Doctor, Dr. Gordon Mather, and his Deposition was taken. On November 23, 2005, Plaintiff moved to file Instantly her First Amended Complaint Against State Farm to allege facts already brought out on Bad Faith and Punitive Damages, although the same was not then pleaded. State Farm filed a Motion In Opposition for every Motion that Plaintiff filed for an Extension to plead, and this carried on right to the present. On December 12, 2005, the Court denied Plaintiff's Motion to file an Amended Complaint. On September 30, 2005, State Farm filed a Motion For Judgment On The Pleadings.

On November 23, 2005, Plaintiff filed a Motion For Leave To File Instantly, First Amended Complaint against State Farm, as to facts already raised, but not pleaded for Bad Faith and Punitive Damages. After Defendant State Farm filed on November 30, 2005, their Opposition for Plaintiff's Motion to file an Amended Complaint, the Court, on December 12, 2005, Denied Plaintiff's Leave to file First Amended Complaint because of the January 30, 2006, Trial date for State Farm. On December 20, 2005, Plaintiff filed a Motion for an Extension to December 30, 2005, to file her Response to State Farm's Motion For Judgment On The Pleadings. After State Farm opposed that Motion, by its filing on December 27, 2005, and on January 5, 2006, Defendant Goodwin, by Attorney DeLaney, filed a Motion In Limine, and on the same date, a Motion For separate Trials, ordering by their Motion, Plaintiff not to mention anything about State Farm Insurance and for other Leave. On January 6, 2006, the Court issued an Order Denying Plaintiff's Motion For Leave to December 30, 2005, To File Response To Defendant State Farm's Motion For Judgment On The Pleadings, and the Court then denied Plaintiff's Motion For Leave To File Amended Complaint on December 12, 2005. On January 12, 2006, Plaintiff filed a Memorandum Of Law Opposing State Farm's Motion For Judgment On The Pleadings, and for Oral Hearing thereon. State Farm then, on January 17, 2006, filed a Motion To Strike Plaintiff's Memorandum Of Law. On January 30, 2006, the Court issued an Order vacating the Trial date of January 30, 2006. and Defendant Keeton's Motion bifurcate the 2 Trials so that State Farm's could be tried separately, and ordered State Farm to Trial on June 5, 2006. On February 21, 2006, Plaintiff filed a very important and desperately needed Motion For Leave To Take Deposition Of Health Plus Doctor Orsovitiz and Dr. Phillip Horowitz who had

offered testimony contrary to what Dr. Mather, Plaintiff's Doctor, had testified on what caused Plaintiff's claims from the collision, as Dr. Mather had said a number of her claims were caused by her Diabetic natural condition. This was decisive, because Plaintiff had no first-hand Doctors to testify, in person, nor by Deposition. Dr. Mather, Plaintiff's so-called regular Doctor turned against her, and it was essential and imperative for Dr. Horowitz, a very renowned and intelligent Doctor, to be able to testify. On February 23, 2006, this could all be taken care of then, but the Court denied that matter, and on February 23, 2006, the Court ordered that Plaintiff could only file an Amended Complaint on alleging the facts of damage, from the damage caused Plaintiff by Adjuster Michelle Corpuz Yost's claimed lies or falsehoods about what the Release signed by the Plaintiff, did or did not cover, and the Court then denied Judgment On The Pleadings. Then, on February 23, 2006, the Court again denied Plaintiff's Motion For Leave To File An Amended Complaint and the Court then also denied State Farm's Motion For Judgment On The Pleadings. On ^{February}~~March~~ 27, 2006, Plaintiff found out that the Court was not going to allow an Extension of even 1 week, which at a prior Pretrial, the Judge said could be done, and Plaintiff moved for a Vacation of the present Trial date. On February 28, 2006, Attorney DeLaney for Defendant Goodwin, filed a Memorandum Opposing The Deposition Of Dr. Orsovitz, Dr. Horowitz, and for Vacation of present Trial date. This was crucial because those Key Witnesses were necessary, to meet the objections of Defendant's cross examination of Plaintiff's Doctors, which could have been done with no harm to the Defendants, but the Court denied it. On March 1, 2006, the Court denied Plaintiff's Motion To Vacate The Trial Date and Plaintiff was denied Expert Testimony offered by Dr. Horowitz, and Dr. Orsovitz, although Defendants could well cross examine each Doctor, and not be prejudiced. The video Depositions of Dr. Mather, and Dr.

Frogameni, the latter operating on Plaintiff's knee, were allowed to be filed.

On March 9, 2006, the Jury's Verdict in favor of the Defendant and against the Plaintiff, were filed.

Then on March 24, 2006 the Judgment Entry on the Jury's Verdict was filed, which was prepared by Attorney DeLaney. On March 27, 2006, Plaintiff timely filed a Motion For A New Trial.

On April 19, 2006, Plaintiff filed her response to State Farm's 2nd Motion For Judgment On The Pleadings. Then on May 1, 2006, the Court filed, what amounted to a Final Judgment, in ruling that the 2nd Motion For Judgment On The Pleadings by State Farm was Granted, and further, that all of Plaintiff's claims are Dismissed With Prejudice, and there is no just reason for delay. Likewise, on May 1, 2006, the Court issued a Judgment Entry Denying Plaintiff's Motion For A New Trial and the same was a Final Appealable Order. Further, on May 1, 2006, the Court granted the 2nd Motion For Judgment On The Pleadings filed by Defendant State Farm and this case was Dismissed With Prejudice.

On May 31, 2006, Plaintiff then duly filed her Notice Of Appeal and Praecipe and then on July 17, 2006, Plaintiff moved for an Extension of time for Appellant to file the Transcript of the Trial Testimony. On August 4, 2006, the Court granted Plaintiff's said Motion for an Extension of the time to file the Transcript of the Trial Testimony.

On August 4, 2006, the Court granted Plaintiff's Motion for the Court to determine the time within which the Trial Transcript is to be filed. This Counsel felt then, that Judge Doneghy knew better than anyone else, how long it would take, for the Court Reporter to prepare the Transcript, and that's why this Counsel depended upon what Judge Doneghy ruled. The delays have occurred, not because

Plaintiff's counsel was trying to get the record and transcript filed as soon as possible, because I was doing that in the way that I thought would get them filed as soon as possible. Judge Doneghy knew more than anybody how quickly the court reporter would get the transcript finished and he was about five (5) weeks early in his prediction. This counsel thought the Clerk would do what the Clerk had to do, as soon as possible. This counsel couldn't hurry anyone. I paid originally a \$1,000 deposit, and the balance by a bank check. I did all I could.

But the Court of Appeals was in error, in being so strict on timeliness, because appeals should be divided on merits, not procedural definitions.

On January 11, 2007, the Court of Appeals dismissed this appeal because the record wasn't filed on time. I filed my response and tendered my Brief on December 21, 2006, but that was not accepted.

The Court of Appeals issued its denial of all Plaintiff-Appellant's Motion on January 11, 2007, and this Appeal is timely filed in the Ohio Supreme Court.

ARGUMENT

Proposition of Law No. I

ONCE PLAINTIFF HAS INTRODUCED EVIDENCE THAT THE DEFENDANT, WHO ALSO WAS INSURED WITH THE SAME INSURER, BY DEFENDANT'S NEGLIGENCE CAUSED A COLLISION CAUSING INJURIES TO PLAINTIFF, AND THEN THE DEFENDANT'S LIABILITY ADJUSTER THEN FALSELY TELLS PLAINTIFF TO SIGN THE GENERAL RELEASE, BUT TELLS PLAINTIFF FALSELY THAT ALTHOUGH YOU SIGN THE RELEASE YOU CAN STILL RECOVER FOR ALL YOUR INJURIES AND THE DEFENDANT'S ADJUSTER TELLS PLAINTIFF THAT STATE FARM WILL PAY YOUR TWO MEDICAL BILLS OF AROUND \$4,000 TOTAL, AND THAT PLAINTIFF CAN STILL NEVER LATER THE REST OF YOUR INJURIES AND CLAIMS, AND PLAINTIFF IS THUS PERSUADED TO SIGN THE GENERAL RELEASE, AND THEN LATER, PLAINTIFF FILES SUIT AND DEFENDANT'S CARRIER FILED A MOTION FOR

SUMMARY JUDGMENT ON SAID RELEASE, BUT PLAINTIFF THEN BY HER AFFIDAVIT OFFERS EVIDENCE ENTITLING PLAINTIFF TO VACATE THE RELEASE, AND THE TRIAL COURT ULTIMATELY, OVER 3 YEARS LATER, VACATES THE RELEASE, DENIES THE SUMMARY JUDGMENT, BECAUSE PLAINTIFF INTRODUCED EVIDENCE THAT UNDER *SLOAN V. STANDARD OIL CO.* (1964), 177 OHIO ST. 149, THAT THE PARTIES ACTED UNDER A MUTUAL MISTAKE AS TO THE EXTENT OF PLAINTIFF'S INJURIES, BECAUSE LATER AFTER PLAINTIFF'S DOCTOR AFTER OPERATING ON PLAINTIFF'S KNEE THAT IT PROBABLY WAS CAUSED BY THE COLLISION, BUT AT THE TIME OF SIGNING THE RELEASE, PLAINTIFF TOLD THE INSURER'S ADJUSTOR THAT THE DOCTOR'S NURSE HAD TOLD PLAINTIFF PROBABLY WAS NOT CAUSED BY THE COLLISION BECAUSE THE PAIN CAME LATER.

THE MEDICAL CLAIMS ADJUSTER DOES NOT TELL PLAINTIFF SHE COULD RECOVER UNDER MEDICAL PAYMENTS COVERAGE, AND NOT HAVE TO SIGN A RELEASE, AND PLAINTIFF DID NOT KNOW THIS; AND THE TRIAL COURT IN THE ACTION AGAINST STATE FARM, DENIES PLAINTIFF LEAVE TO FILE AN AMENDED COMPLAINT ALLEGING FRAUD AND BAD FAITH. ALL THE ABOVE, AS THE EVIDENCE THEN BROUGHT FORTH, SO SHOWED, AND THE STATE FARM ADJUSTER ALTHOUGH INFORMED BY THE LIABILITY ADJUSTER THAT PLAINTIFF APPEARED UNINFORMED OF HER COVERAGE UNDER MEDICAL PAYMENTS, WAS INFORMED BY THE STATE FARM MEDICAL PAYMENTS ADJUSTER, NEVER ONCE CALLED PLAINTIFF IN, AND INFORMED PLAINTIFF ALTHOUGH PLAINTIFF WAS KNOW TO BE CONFUSED AND PLAINTIFF AND HER COUNSEL CLAIM THIS EVIDENCE MADE A QUESTION OF FACT IN BAD FAITH AND FRAUD, IN THE ACTION AGAINST STATE FARM, BUT THE TRIAL COURT REFUSED PLAINTIFF SO TO AMEND AND THIS WAS REVERSIBLE ERROR.

THE MOST RELEVANT CASE IS *MOTORIST MUTUAL INSURANCE CO. V. SAID*,
(1992) 63 OHIO ST.3D 690
AT PAGE 699.

Proposition of Law No. II

THE TRIAL COURT COMMITTED PREJUDICIAL AND REVERSIBLE ERROR, BEFORE, AFTER, AND DURING THE TRIAL BY A COMBINATION OF ERROR AND MISTAKES, INCLUDING, WITHOUT EXCLUDING OTHERS BY: (1) IN NOT ALLOWING PLAINTIFF'S MOTION OF FEBRUARY 24, 2006 TO ALLOW PLAINTIFF TO TAKE THE DEPOSITION OF DR. HOROWITZ, HEALTH PLUS, AND/OR TO CALL DR. PHILLIP L. HOROWITZ; AND/OR TO DELAY THE TRIAL ONE (1) WEEK TO MARCH 13, 2006, WHICH THE COURT SAID AT THE HEARING ON THIS MOTION WAS

“DOABLE”, WHOSE TESTIMONY WAS NECESSARY TO CONTRADICT DR. MATHER WHO HAD TESTIFIED THAT ALL OF HER PAIN COMPLAINTS WERE CAUSED BY PLAINTIFF’S DIABETES; AND DR. HOROWITZ’S TESTIMONY THAT THAT WAS NOT TRUE AS HE SAID THE COLLISION CAUSED HER PAIN IN THE SHOULDER AREA; WAS THE ONLY REALLY CLEAR EVIDENCE OF HOW PLAINTIFF WAS AFTER THE STACIE KEATON COLLISION OF JANUARY 18, 1999; AND IN VIEW THAT ON JANUARY 30, 2006, THE COURT HAD ORDERED THE TRIAL TO BE BIFURCATED AS TO STACIE KEATON GUARDIAN, AND THERE WERE TO BE NO REFERENCES OF ANY KIND TO STATE FARM OF ITS CONDUCT OR FRAUD.

The absence of the health plus records, before, and after, each collision, and particularly, not to have the health plus records, before and after that collision of January 18, 1999, was a deathly blow to plaintiff, and attorney Delaney and State Farm knew it.

Dr. Mather in his deposition had made too many statements against plaintiff. This counsel knew Dr. Horowitz was highly competent, and that a jury needed to hear what he said; and that Dr. Horowitz “tells it like it is.”

There were no specific objections. We wanted to point out that Dr. Horowitz, a Phi Beta Kappa, opined that plaintiff’s injuries from the shoulders up caused by the collision, but Dr. Mather had written plaintiff a letter saying her diabetes would not cause all her injuries and pain. Yes, such a need was essential – then – for a fair trial and constitutional trial.

We offered plaintiff for any examinations or depositions wanted. Defendants had their advantage, and knew it. Defendants had never had plaintiff examined by their doctors.

For law, we cite Griffin v. Lamberjack (1994) 95 Oa.3d 257, at 264:

“.. [3-4] IN DETERMINING WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN GRANTING OR DENYING THE MOTION FOR A CONTINUANCE, A REVIEWING COURT MUST BALANCE THE INTERESTS OF JUDICIAL ECONOMY AND JUSTICE AGAINST ANY POTENTIAL PREJUDICE TO THE DEFENDANT. NIAM INVESTIGATIONS, INC., V. GILBERT (1989), 64 OHIO APP. 3D 125, 128, 580 N.E. 2D 840, 841. OBJECTIVE FACTORS WHICH

MAY BE CONSIDERED BY THE TRIAL JUDGE IN DETERMINING A MOTION FOR A CONTINUANCE INCLUDE THE LENGTH OF THE DELAY REQUESTED, WHETHER OTHER CONTINUANCES HAVE BEEN ALLOWED, ANY INCONVENIENCE TO THE LITIGANTS, THE COURT AND WITNESSES, WHETHER THE REQUESTED DELAY IS LEGITIMATE RATHER THAN DILATORY, PURPOSEFUL OR CONTRIVED, WHETHER THE DEFENDANT CONTRIBUTED TO THE CIRCUMSTANCES UNDERLYING THE REQUEST AND OTHER RELEVANT FACTORS BASED ON THE UNIQUE ASPECTS OF EACH CASE. STATE V. UNGER (1981), 67 OHIO ST. 2D 65, 67-68, 21 O.O. 3D 41, 43 423 N.E. 2D 1078, 1080. [5].

Proposition of Law No. III

THE TRIAL COURT COMMITTED PREJUDICIAL AND REVERSIBLE ERRORS IN GRANTING ON JUNE 14, 2005, DEFENDANT MILL'S MOTION TO DISMISS FOR NOT MAKING DISCOVERY, WHEN AT THE OUTSET PLAINTIFF SIGNED MEDICAL AUTHORIZATIONS FOR ATTORNEY DELANEY TO SECURE SAID COPIES OF ALL OF PLAINTIFF'S MEDICAL RECORDS TO EACH PARTY; AND DEFENDANT MILLS TOOK PLAINTIFF'S DEPOSITION ON SEPTEMBER, 2005 WITH NO OBJECTION BY PLAINTIFF NOR DEFENDANTS; AND THEN DEFENDANT MILLS TIMELY SECURED, ALL MEDICAL RECORDS, AND PLAINTIFF'S DEPOSITION, AS DID EACH PARTY.

WITH THE PAGE LIMITATIONS, THE ABOVE REALLY IS SELF-EXPLANATORY.

CONCLUSION

Appellant is pressed for time. Our cause and legal arguments are just and valid. We ask the Court to take jurisdiction, and we will do what we can to bring in the Lawyer Associations, Plaintiff and Defendant.

Respectfully submitted,



John G. Rust
Attorney for Appellant
Shirley J. Garmon

Done 1/18/07

FILED
COURT OF APPEALS
2007 JAN 11 A 9:37

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

*Decided Feb. 7th 2007
Appeal to Ohio Sup
Ct.*

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Shirley Garmon
Appellant

Court of Appeals No. L-06-1173
Trial Court No. CI0200304702

v.

Anna Mills, et al.
Appellees

DECISION AND JUDGMENT ENTRY

JAN 11 2007

Decided:

This matter is before the court on appellant's motion to reinstate her appeal and motion for leave to file her brief on December 19, 2006, appellee State Farm's response in opposition to reinstate appeal, appellee Stacie Keaton Goodwin's memorandum in opposition to reinstate appeal, appellant's December 21, 2006 motion for leave to file her brief instant, and appellee Goodwin's memorandum in opposition.

In appellant's motion to reinstate, she is requesting that the court reconsider its November 27, 2006 decision in which the court granted appellees' motions to dismiss appellant's appeal, pursuant to App.R. 11(C).

RECEIVED JAN 16 2007



As stated in *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, paragraph two of the syllabus:

"The test generally applied upon the filing of a motion for reconsideration in the court of appeals is whether the motion calls to the attention of the court an obvious error in its decision or raises an issue for consideration that was either not considered at all or was not fully considered by the court when it should have been. (App R. 26, construed.)"

Upon due consideration of appellant's motion to reinstate her appeal, this court finds that appellant has failed to call to our attention any "obvious error" in our decision, or raise any issues that have not been thoroughly considered by this court in the original decision. Accordingly, we find appellant's motion to reinstate not well-taken and denied. Appellant's motions for leave to file her brief are rendered moot.

Peter M. Handwork, J.

Arlene Singer, P.J.

William J. Skow, J.
CONCUR.

Peter M. Handwork

JUDGE

Arlene Singer

JUDGE

William J. Skow

JUDGE

