

IN THE SUPREME COURT OF OHIO

SHIRLEY J. GARMON,  
Appellant,

vs.

ANNA M. MILLS, et al.  
Appellees.

\*  
\* On Appeal from the Lucas County Court of  
\* Appeals, Sixth Appellate District  
\*  
\* Supreme Court Case No. 07-0367  
\*  
\* Court of Appeals Case No. L-06-1173  
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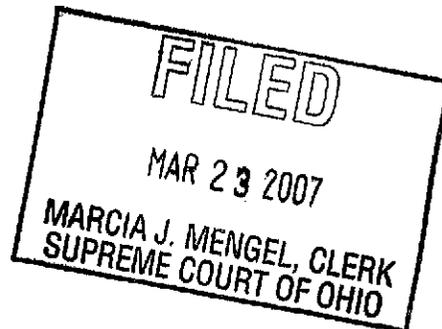
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APPELLEE STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY'S  
MEMORANDUM IN RESPONSE TO APPELLANT GARMON'S MEMORANDUM IN  
SUPPORT OF JURISDICTION

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**THIS CASE DOES NOT INVOLVE A SUBSTANTIAL CONSTITUTIONAL QUESTION  
AND IS NOT OF PUBLIC OR GREAT GENERAL INTEREST**

The only appealable issue before this Court is the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. It is the only judgment from which Appellant Garmon timely appealed, and is the only attachment to her notice of appeal and her memorandum in support of jurisdiction. This judgment only involved the Sixth District Court of Appeals' dismissal of her appeal because of her gross non-conformance with the Ohio Rules of Appellate Procedure and the Local Rules of the Sixth District Court of Appeals. Appellant Garmon presents no basis for challenging the constitutionality of these rules and states no reason why this decision is of public or great general interest. Therefore, this Court should decline to exercise jurisdiction over this appeal.

**I. The only appealable issue before this Court is the Sixth District Court of Appeals' denial of Appellant Garmon's motions to reinstate her appeal and to file her brief instant.**

As an initial matter, the only issue properly presented for appeal before this Court is the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. This judgment denied Appellant Garmon's motion to reinstate appeal filed in the Sixth District Court of Appeals on December 7, 2006 and her motion for leave to file appellant's brief instant filed with the Sixth District Court of Appeals on December 21, 2006.

The Decision and Judgment Entry of January 11, 2007 is the only judgment from which Appellant Garmon timely appealed within the mandatory forty-five day period prescribed by Rule II(2)(A) of the Rules of Practice of the Supreme Court of Ohio. Further, said judgment entry is the only attachment to Appellant Garmon's notice of appeal and memorandum in support of jurisdiction. Pursuant to Rules II(2)(A) and III(1)(D) of the Rules of Practice of the Supreme

Court of Ohio, the Decision and Judgment Entry of January 11, 2007 is the only court of appeals opinion and judgment entry from which Appellant Garmon purports to appeal. Consequently, the issues over which she requests this Court to exercise jurisdiction are confined to the issues presented in that judgment entry.

In sum, Appellant Garmon only requested that this Court exercise jurisdiction over the issues contained in the Decision and Judgment Entry of January 11, 2007. These issues are exclusively limited to the Sixth District Court of Appeals' denial of her motion to reinstate appeal and her motion for leave to file appellant's brief instante. The appellant does not properly appeal any substantive issues outside of that judgment entry; therefore, they are not before this Court.

**II. The Sixth District Court of Appeals' denials of Appellant Garmon's motion to reinstate appeal and motion to file her brief instante do not involve a substantial constitutional question and are not of public or great general interest.**

This case does not involve a substantial constitutional question and is not of public or great general interest because it involves the simple application of the Ohio Rules of Appellate Procedure and the Local Rules of the Sixth District Court of Appeals. Below, the Sixth District Court of Appeals dismissed Appellant Garmon's appeal because of her gross non-conformance with statutory appellate procedure. There is no basis for challenging the constitutionality of these procedures, and questions of their application are not an issue of public or great general interest.

A background of this case's progression through the appellate process indicates that it is not appropriate for this Court's jurisdiction. The issues in this case begin on May 31, 2006, when Appellant Garmon filed her notice of appeal in the Lucas County Court of Common Pleas. She purported to appeal from the trial court's judgment entry of May 1, 2006 which both denied her motion for a new trial and granted Appellee State Farm Mutual Automobile Insurance

Company's ("State Farm") motion for judgment on the pleadings. Under Ohio App.R. 10(A), Appellant Garmon had forty days to transmit the record to the clerk of the court of appeals, or until July 10, 2006. Appellant Garmon did not transmit the record by that date.

On July 17, 2006, Appellant Garmon moved the Lucas County Court of Common Pleas for an extension of time to transmit the record. On August 4, 2006, that court granted her an extension until October 31, 2006. However, under Local Rule 2 of the Sixth District Court of Appeals, the trial court is divested of jurisdiction to grant such extensions after the period prescribed by Ohio App.R. 10(A) passes. As such, the trial court had no authority to grant the extension. Rather, after the record due date, Appellant Garmon could only request an extension directly from the Sixth District Court of Appeals. She never requested an extension from the Sixth District despite the fact that she continued to fail to transmit the record. On this basis, State Farm moved the Sixth District to dismiss the appeal on September 6, 2006 pursuant to Ohio App.R. 11(C). Appellee Goodwin also filed a motion to dismiss the appeal on September 13, 2006.

Despite an extension granted by the Sixth District Court of Appeals to respond to State Farm's and Appellee Goodwin's motions, Appellant Garmon never responded. The Sixth District Court of Appeals granted the appellees' motions to dismiss the appeal on November 27, 2006. At that point, Appellant Garmon still had not transmitted the record and still had not requested an extension. On December 7, 2006, Appellant Garmon moved the Sixth District Court of Appeals to reinstate her appeal. Then, on December 21, 2006, Appellant Garmon requested leave to file her brief. The Sixth District Court of Appeals treated the motion to reinstate as a motion to reconsider, and found it to be without merit. Because the dismissal remained in place, the Sixth District found the motion for leave to file the brief to be moot.

As previously stated, this case only involves a dismissal based on Appellant Garmon's gross non-conformance with the Ohio Rules of Appellate Procedure and the Local Rules of the Sixth District Court of Appeals. Instead of the myriad substantive questions she raises in her memorandum in support of jurisdiction, her appeal to this Court is only about the Sixth District's dismissal of her appeal due to her failure to follow appellate rules. Appellant Garmon identifies no basis for challenging the constitutionality of these rules. Further, she does not even allege that the Sixth District Court of Appeals incorrectly applied these rules. Finally, she states no reason why this particular application of these rules presents an issue of public or great general interest. She only attempts to present substantive issues to this Court that were never adjudicated by the Sixth District Court of Appeals, and which are not properly before this Court.

In sum, the only appealable issues properly before this Court are those contained in the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. These issues are confined to the dismissal of Appellant Garmon's case due to her gross non-conformance with the Ohio Rules of Appellate Procedure and the Local Rules of the Sixth District Court of Appeals. She identifies no constitutional issues or reasons why this case is of public or great general interest. She does not even allege that the Sixth District incorrectly applied these rules. Therefore, this Court should not exercise jurisdiction over any issues in this appeal.

## **RESPONSES TO APPELLANT GARMON'S PROPOSITIONS OF LAW**

### **APPELLANT GARMON'S PROPOSITION OF LAW NO. I**

**Once plaintiff has introduced evidence that the defendant, who was also 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 [sic], 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 adjuster 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 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.**

In response to Appellant Garmon's Proposition of Law No. I, Appellee State Farm's position is that Appellant Garmon did not perfect an appeal on this issue and this issue is not properly before the Court for consideration of jurisdiction. Appellant Garmon only appeals the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. Said judgment is the only court of appeals opinion and judgment attached to her notice of appeal and memorandum in support of jurisdiction. That judgment does not address or adjudicate her Proposition of Law No. I; therefore, it is not properly before this Court.

However, if this Court does consider Appellant Garmon's Proposition of Law No. I, Ohio Civ. R. 15(A) requires leave of court to amend a pleading after the first responsive pleading is served. Grant or denial of a request for leave to amend a complaint is within the discretion of the

trial court. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 175. At the time of Appellant Garmon's request, this case was on its sixth trial date and had been pending in one form or another for some five years. This delay was entirely a result of Appellant Garmon's requests for extensions and new trial dates. Considering these facts, Appellee State Farm respectfully submits that the Lucas County Court of Common Pleas did not abuse its discretion when it denied Appellant Garmon's request for leave to amend her complaint.

### **APPELLANT GARMON'S PROPOSITION OF LAW NO. II**

**The trial court committed prejudicial and reversible error, before, after, and during the trial by a combination of effort 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.**

In response to Appellant Garmon's Proposition of Law No. II, Appellee State Farm's position is that Appellant Garmon did not perfect an appeal on this issue and this issue is not properly before the Court for consideration of jurisdiction. Appellant Garmon only appeals the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. Said judgment is the only court of appeals opinion and judgment attached to her notice of appeal and memorandum in support of jurisdiction. That judgment does not address or adjudicate Appellant Garmon's Proposition of Law No. II; therefore, it is not properly before this Court.

However, if this Court does consider Appellant Garmon's Proposition of Law No. II, Appellee State Farm respectfully submits that the trial court properly exercised its discretion in denying a continuance of the trial date. The Lucas County Court of Common Pleas properly applied the analyses in *State v. Unger* (1981), 67 Ohio St.2d 65, and *NAIM Investigations v. Gilbert* (1999), 64 Ohio App.3d 125, in overruling Appellant Garmon's request for a continuance.

### **APPELLANT GARMON'S 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.**

In response to Appellant Garmon's Proposition of Law No. III, Appellee State Farm's position is that Appellant Goodwin did not perfect an appeal on this issue and this issue is not properly before the Court for consideration of jurisdiction. Appellant Garmon only appeals the Sixth District Court of Appeals' Decision and Judgment Entry of January 11, 2007. Said judgment is the only court of appeals opinion and judgment attached to her notice of appeal and memorandum in support of jurisdiction. That judgment does not address or adjudicate her Proposition of Law No. III; therefore, it is not properly before this Court.

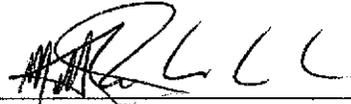
However, if this Court does consider Appellant Garmon's Proposition of Law No. III, Appellee State Farm respectfully submits that this issue is unrelated to Appellant Garmon's claim against Appellee State Farm. As such, Appellee State Farm does not have a position on this proposition of law.

**CONCLUSION**

For the above reasons, Appellee State Farm Mutual Automobile Insurance Company respectfully requests that this Court decline jurisdiction over all of the issues Appellant Garmon presents to this Court.

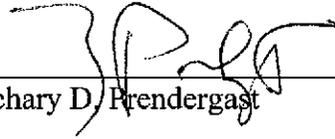
Respectfully submitted,

**ROHRBACHERS LIGHT CRON &  
TRIMBLE CO., L.P.A.**



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Matthew J. Rohrbacher



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Zachary D. Prendergast

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State Farm Mutual Automobile Insurance  
Company

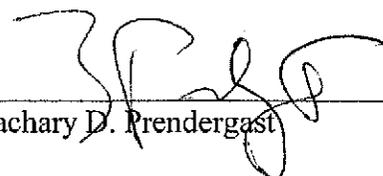
**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing pleading was served by regular U.S. mail on this 22<sup>nd</sup> day of March, 2007 to:

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