

IN THE SUPREME COURT OF OHIO

Monica Fletcher, Individually and as
Administratrix of the Estate
Of Victor Shaw, Deceased

Plaintiffs/Appellees

v.

University Hospitals of Cleveland, et al.

Defendants/Appellants

Supreme Court Case No. 2007-1529

On Appeal from the Cuyahoga County
Court of Appeals, Eighth Appellate District

Court of Appeals
Case No. CA 06 -88573

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT RAYMOND ONDERS, M.D.

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SUPREME COURT OF OHIO

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**INTRODUCTION AND EXPLANATION OF WHY THIS CASE IS OF
PUBLIC OR GREAT GENERAL INTEREST**

A. Introduction

This case focuses on the medical care and treatment rendered to Victor Shaw that allegedly resulted in his untimely death. Appellee failed to comply with the newly revised provisions of Ohio Civ. R. 10(D)(2), requiring that an Affidavit of Merit be filed with a medical negligence claim, and Appellant University Hospitals of Cleveland timely filed a Motion to Dismiss. The trial court agreed that the Complaint was deficient without the Affidavit of Merit and dismissed the case as to all parties.

After fully briefing the matter on appeal, the Eighth District agreed that a wrongful death action premised on a medical malpractice claim required the filing of an Affidavit of Merit. However the Appellate Court inexplicably reversed the trial court's decision and imposed *sua sponte* a new procedural requirement for challenges made pursuant to Civ. R. 10(D)(2). For the first time in Ohio, a Motion for a More Definite Statement is a prerequisite to filing a challenge made pursuant to a Civ. R. 12(B)(6) Motion to Dismiss.

The decision by the Eighth District Court of Appeals is a miscarriage of justice with widespread implications for Ohio's entire civil justice system.

B. Public or Great General Interest

The State of Ohio has engaged in an elaborate and extensive effort to protect health care providers from the burden and expense of defending themselves against frivolous lawsuits. This case presents a critical issue of fundamental fairness and justice in the realm of medical negligence cases, and specifically those involving challenges to the sufficiency of the Complaint under the newly revised provisions of Civ. R. 10(D)(2). With its reversal of the trial court's order, the Eighth District Court of Appeals single-handedly forced defendants of medical

malpractice claims to needlessly engage in motion practice simply to enforce the clear mandate of Civ. R. 10(D)(2). The Appellate Court's misinterpretation of the Civil Rule requirements and legislative intent of Civ. R. 10(D)(2) jeopardizes the framework for initiating all medical malpractice cases in the State of Ohio, and demands analysis and clarification by this Court.

When the General Assembly drafted Civ. R. 10(D)(2), it carved out express language making it mandatory to file an Affidavit of Merit with a medical malpractice complaint. As the Rule states, "a complaint that contains a medical claim...as defined in section 2305.113 of the Revised Code, *shall* include an affidavit of merit." Civ. R. 10(D)(2)(a), emphasis added. For each defendant against whom expert testimony would be necessary to establish liability at trial, the Affidavit of Merit "*shall* be provided by an expert witness" and "*shall* include" certain information, fundamental to plaintiff's claims. *See* Civ. R. 10(D)(2)(a), emphasis added. Specifically, the Affidavit of Merit must include a statement by the expert that they have 1) reviewed all medical records reasonably available to the plaintiff, 2) are familiar with the applicable standard of care, and 3) their opinion that the standard of care was breached by one or more of the defendants. Civ. R. 10(D)(2)(a)(i)-(iii). If an Affidavit of Merit is not available at the time of filing the Complaint, the Rule expressly provided plaintiffs with an opportunity to request an extension of time. Finally, the General Assembly's intent is unmistakably embedded within the rule: "*to establish the adequacy of the complaint.*" Civ. R. 10(D)(2)(c), emphasis added.

The mandatory requirements and purpose of this Rule could not be any clearer. Since the Rule was enacted, courts have analyzed this provision in response to Civ. R. 12(B)(6) Motions to Dismiss that attack the sufficiency of the Complaint when an Affidavit of Merit has not been filed.

In this case, the appellate court improperly skirted the language of the Rule by reaching the remarkable conclusion that failure to file an Affidavit of Merit or request an extension of time was not fatal to Appellee's Complaint under Ohio law. This conclusion is at war with all of Ohio case law analyzing this Rule. Now, when the plaintiff has failed to file the requisite Affidavit of Merit, it is the defendant's responsibility to bring this to the attention of the court and plaintiff by way of a Motion for More Definite Statement. The appellate court failed to analyze the practical application of its ruling. This forces the defendant to request an Affidavit of Merit be filed, and allows no opportunity to truly attack the sufficiency of the Complaint that is filed without one. Although a Complaint may be defective on its face, it is now incumbent upon the defendant to expend time, effort, and resources in correcting the deficiency.

Moreover, the Court of Appeals overlooked in this instance that Appellee deliberately failed to file an Affidavit of Merit. A Motion for a More Definite Statement in this instance would not have remedied the Complaint, as Appellee believed an Affidavit of Merit was not necessary for a wrongful death claim.

Perhaps even more compelling, and of broad application to Ohio's civil justice system as a whole, is the Appellate Court's holding that a defendant who fails to file a motion for a more definite statement, before filing a Motion to Dismiss pursuant to Civ. R. 12(B)(6), has waived the right to assert plaintiff's failure to attach a copy of a written instrument as a basis for dismissing the complaint. The ramifications of such a conclusion are troubling when challenges to the sufficiency of a Complaint are affirmatively made by a defendant but then deemed to have been waived by operation of the court and without prior notice.

This appellate court's decision eviscerates the letter and spirit of Civ. R. 10(D)(2), and disrupts the balance of fairness and equity in medical malpractice claims litigated in the State of Ohio.

STATEMENT OF THE CASE AND FACTS

On March 29, 2006, Plaintiff-Appellee Monica Fletcher, Administratrix of the Estate of Victor Shaw, re-filed her "Medical Malpractice/Wrongful Death" Complaint in the Cuyahoga County Court of Common Pleas against Defendants-Appellants University Hospitals of Cleveland and Raymond Onders, M.D. Appellee asserted three claims for relief: (i) negligence, (ii) wrongful death, and (iii) survivorship. Appellee failed to attach an Affidavit of Merit with her Complaint and failed to request an extension of time within which to file an Affidavit of Merit.

Appellant University Hospitals was served with the Complaint on April 5, 2006, and timely filed a Motion to Dismiss based on Plaintiff's failure to comply with Ohio Civ. R. 10(D)(2). On July 13, 2006, the trial court granted Appellant University Hospital's Motion, thereby dismissing Plaintiff's Complaint in its entirety and as to all parties.

Appellee argued on appeal that the Complaint was not a medical claim as defined by Ohio R.C. 2305.113(E)(3), and therefore did not require the filing of an Affidavit of Merit. The Eighth District Court of Appeals disagreed. The court found that the claims being asserted against the hospital and the physician arose out of the medical diagnosis, care or treatment of the decedent, and the claim resulted from alleged acts or omissions in providing medical care. For these reasons, the Court of Appeals correctly held that the wrongful death claim asserted by Appellant was a medical claim as defined by R.C. §2305.113.

Despite this finding, the appellate court *reversed* the trial court's ruling. The court determined Appellant University Hospitals' filing of a Motion to Dismiss was procedurally incorrect. The challenge to the deficiency of the Complaint, the court held, should have been presented through a Motion for a More Definite Statement rather than a Motion to Dismiss.

Admittedly this was a case of first impression for the Court of Appeals. However, this particular issue had never been preserved or challenged on appeal. Further, the Court did not invite the parties to brief the issue or present it for analysis during oral argument.

For these reasons Appellant University Hospitals promptly filed an Application to the Court of Appeals for Reconsideration of its decision. On July 2, 2007, the Eighth District denied the Application and restated its conclusions.

The Opinion and Order of the Eighth District Court of Appeals is inconsistent with the express language and intent of Civ.R. 10(D)(2) and requires clarification by this Court.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: The Sufficiency of a Complaint May Be Challenged By A Civil Rule 12(B)(6) Motion For Failure to State a Claim Upon Which Relief Can Be Granted for Failure to File an Affidavit of Merit in Accordance with Civil Rule 10(D)(2).

In addressing the requirements of Civil Rule 10(D)(2) on appeal, the appellate court held that when an Affidavit of Merit is not attached to the Complaint the proper remedy is to file a Motion for More Definite Statement pursuant to Civ. R. 12(E). The basis for this holding was the court's misinterpretation of Civ. R. 10(D)(1), which expressly requires the filing of a Civ. R. 12(E) motion. However, this Court and the General Assembly specifically stated that the requirements of Civ. R. 10(D)(2) address the *sufficiency of the Complaint*. Therefore the only appropriate mechanism for challenges under that Rule would be a Motion to Dismiss for failure to state a claim upon which relief can be granted pursuant to Civ. R. 12(B)(6).

Ohio Civil Rule of Procedure 12 concerning defenses and objections, when and how presented, provides in pertinent part:

(B) How Presented

Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19 or Rule 19.1. ** When a motion to dismiss for failure to state a claim upon which relief can be granted presents matters outside the pleading and such matters are not excluded by the court, the motion shall be treated as a motion for summary judgment and disposed of as provided in Rule 56. ***

Civ. R. 12(B). As this Court has stated, and numerous Ohio courts have followed, “A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the *sufficiency of the complaint.*” *State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs.* 65 Ohio St.3d 545, 547, 1992-Ohio-73, emphasis added.

By contrast, Ohio Civil Rule of Procedure 12(E) states:

(E) Motion for Definite Statement

If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within fourteen days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

Civ. R. 12(E). The Staff Notes further state that Rule 12(E) provides that a motion for more definite statement is classified as an “objection” rather than as “defense.” In addition, since it may be asserted only by motion, a defendant who wishes to assert an objection pursuant to this Rule must necessarily employ a two-step procedure. That is, a Motion for More Definite Statement must be filed, followed by a Motion to Strike, Motion to Dismiss or Answer to the Complaint.

In the instant matter, the appellate court held that the only proper mechanism for attacking the Complaint was to file a Civ. R. 12(E) Motion for Definite Statement. However, failing to provide an Affidavit of Merit in a medical negligence case is a procedural deficiency, it is a failure of the plaintiff to include an attachment that is required by law. It does not follow that a Complaint which does not have an Affidavit of Merit attached is necessarily vague or ambiguous. In fact, the claims alleged in the Complaint may be laid out with detailed precision.

The appellate court failed to consider that a Civ. R. 10(D)(2) violation is truly a failure to state a medical negligence claim for which relief may be granted. Without attaching the Affidavit of Merit, the Complaint may be dismissed for insufficiency. Ohio Civil Rule of Procedure 10, as amended and filed by the Supreme Court with the General Assembly on January 11, 2007 and refiled April 30, 2007, was in effect at the time the appellate court issued its decision in this case. The Staff Notes to the amended rule convey the following message:

The rule is intended to make clear that the affidavit is necessary to establish the sufficiency of the complaint. The failure to comply with the rule can result in the dismissal of the complaint, and this dismissal is considered to be a dismissal otherwise than upon the merits pursuant to Civ. R. 10(D)(2)(d).

2007 Staff Note to Civ. R. 10(D), emphasis added. There is no discussion by the General Assembly of vague or ambiguous claims, requiring a Motion for Definite Statement. There is no discussion that the Complaint, or portions thereof may be stricken. Rather, the Staff Notes clearly contemplate a dismissal of the Complaint for failure to comply with the Rule.

At the heart of the controversy between the parties is whether or not Appellee's claims against Appellants are sufficient without an Affidavit of Merit. This is a question of law, which the appellate court analyzed and concluded resoundingly that despite being a wrongful death action not specifically mentioned in Civ. R. 10(D)(2), the Complaint was insufficient without the Affidavit of Merit because it was premised on a medical claim against a hospital and a physician. However, the appellate court impermissibly and inexplicably went one step further to impose a procedural requirement for challenging Civ. R. 10(D)(2) violations that had no basis in Ohio law. There is no precedent that would allow an Ohio court to hold that a Civ. R. 10(D)(2) challenge should be raised as a mere objection to the Complaint, and an outright dismissal of the action can

not be sought in the first instance.¹ The appellate court's decision threatens to undermine not only the language and intent of Civ. R. 10(D)(2), but also the viability of *Hanson* as this State's controlling precedent setting forth the procedure for testing the sufficiency of a Complaint through a Civ. R. 12(B)(6) Motion to Dismiss for failure to state a claim upon which relief can be granted.

¹ Appellant University Hospitals cites to various cases in jurisdictions outside Ohio that have considered Motions to Dismiss to be the proper mechanism for challenging the sufficiency of a Complaint, where an expert report or affidavit has not been attached at the time of filing, as required by the law of that state. Without having to restate each of those cases, Appellant Onders hereby incorporates those cases by reference herein.

CONCLUSION

This appeal presents critical issues in the arena of medical malpractice cases as it relates to the interpretation of Ohio Civ. R. 10(D)(2) requirements for filing an Affidavit of Merit, and to the civil justice system as whole as it relates to interpretation of procedural challenges to the sufficiency of a Complaint. The Appellate Court's Opinion and Order of July 2, 2007, ignores the body of Ohio case law analyzing Ohio Civ. R. 10(D)(2) and directly contravenes the General Assembly's express language and intent.

Prior to the Eighth District's decision, if a plaintiff failed to file an Affidavit of Merit in a medical malpractice claim or request an extension of time the Complaint could be dismissed. After the decision in this case, it is now necessary for the defendant to engage in costly motion practice to bring plaintiff's defect to the Court's attention. Having an opportunity to remedy the defect, plaintiff now suffers no consequences for failing to file an Affidavit of Merit. Any intent to save medical malpractice defendants from the burden and expense of defending frivolous actions is now meaningless.

For the reasons stated herein, Dr. Raymond Onders respectfully requests that this Court accept jurisdiction over this appeal.

Respectfully submitted,


Christina J. Marshall

Counsel of Record for Appellant
Raymond Onders, M.D.

CERTIFICATE OF SERVICE

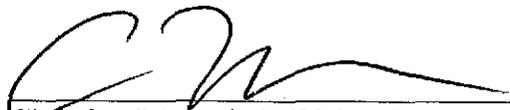
A copy of the foregoing was sent by regular U.S. mail this 27th day of August, 2007 to:

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Court of Appeals of Ohio JUL 2 2007

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 88573

MONICA FLETCHER, ETC.

PLAINTIFF-APPELLANT

vs.

**UNIVERSITY HOSPITALS
OF CLEVELAND, ET AL.**

DEFENDANTS-APPELLEES

**JUDGMENT:
REVERSED AND REMANDED**

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-587892

BEFORE: Rocco, J., Cooney, P.J., McMonagle, J.

RELEASED: June 7, 2007

JOURNALIZED: JUL 2 2007

CA06088573

46346566



VL0638 00298

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**FILED AND JOURNALIZED
PER APP. R. 22(E)**

JUL -2 2007

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.**

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**ANNOUNCEMENT OF DECISION
PER APP. R. 22(B), 22(D) AND 26(A)
RECEIVED**

JUN -7 2007

**GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY _____ DEP.**

CA06088573

45826293



N.B. This entry is an announcement of the court's decision. See App.R. 22(B), 22(D) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(E) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(E). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES-COSTS TAXED

0638 00299

KENNETH A. ROCCO, J.:

Appellant Monica Fletcher claims the trial court erred by dismissing her wrongful death claim for failure to attach an affidavit of merit to the complaint as required by Civ.R. 10(D)(2). We remove this case from the accelerated docket, sua sponte, because it presents "a unique issue of law of substantial precedential value in determining similar cases." We have found no appellate cases construing Civ.R. 10(D)(2) or determining the proper procedure for ensuring compliance with it.¹ Thus, this appears to be an issue of first impression.

Appellant filed her complaint in this case on March 29, 2006 on behalf of herself and as administratrix of the estate of Victor Shaw, having previously filed and voluntarily dismissed the same claims in an action in the Mahoning County Common Pleas Court. She alleged that defendants University Hospitals of Cleveland and Dr. Raymond Onders provided negligent medical care to Victor Shaw, and sought damages for both medical malpractice and wrongful death.

Appellee University Hospitals filed a motion to dismiss the complaint for failure to state a claim because appellant failed to attach to the complaint an

¹The lack of authority on these points should not be surprising. Civ.R. 10(D)(2) became effective July 1, 2005, so there has been little opportunity for appellate review of this issue.

affidavit of merit, as required by Civ.R. 10(D)(2). Appellant responded to this motion. The court subsequently dismissed the case, with prejudice.

Civ.R. 10(D)(2), effective July 1, 2005, provides, in pertinent part:

(a) Except as provided in division (D)(2)(b) of this rule, a complaint that contains a medical claim * * * as defined in section 2305.113 of the Revised Code, shall include an affidavit of merit relative to each defendant named in the complaint for whom expert testimony is necessary to establish liability. The affidavit of merit shall be provided by an expert witness * * * * [and] shall include all of the following:

(i) A statement that the affiant has reviewed all medical records reasonably available to the plaintiff concerning the allegations contained in the complaint;

(ii) A statement that the affiant is familiar with the applicable standard of care;

(iii) The opinion of the affiant that the standard of care was breached by one or more of the defendants to the action and that the breach caused injury to the plaintiff.

(b) The plaintiff may file a motion to extend the period of time to file an affidavit of merit. The motion shall be filed by the plaintiff with the complaint. For good cause shown, the court shall grant the plaintiff a reasonable period of time to file an affidavit of merit.

(c) An affidavit of merit is required solely to establish the adequacy of the complaint and shall not otherwise be admissible as evidence or used for purposes of impeachment.

Appellant did not request an extension of time to file an affidavit of merit.

Rather, she argued that no affidavit was required. Therefore, subsection (D)(2)(b) is inapplicable.

Appellant argues that a wrongful death action is not a "medical claim." Civ.R. 10(D)(2) specifically refers to a medical claim "as defined by section 2305.113 of the Revised Code." Therefore, we must look to this statute for guidance as to the meaning of this term.

R.C. 2305.113(E)(3) defines a medical claim as follows:

(3) "Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following:

(a) Derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person;

(b) Claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies:

(i) The claim results from acts or omissions in providing medical care.

(ii) The claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment.

(c) Claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under section 3721.17 of the Revised Code.

The wrongful death claim asserted by appellant was a medical claim as defined by R.C. 2305.113. It was a claim against a physician and a hospital that arose out of the medical diagnosis, care or treatment of the decedent, and the claim resulted from alleged acts or omissions in providing medical care. We are well aware that R.C. 2305.113 does not supply the statute of limitations for a wrongful death claim. See *Koler v. St. Joseph Hosp.* (1982), 69 Ohio St.2d 477; *Evans v. Southern Ohio Med. Center* (1995), 103 Ohio App.3d 250; *Brosse v. Cumming* (1984), 20 Ohio App.3d 224. However, that fact does not preclude a claim for wrongful death from being a "medical claim" as defined in R.C. 2305.113. The common pleas court in this case correctly determined that appellant's complaint presented a medical claim as to which she was required to supply an affidavit of merit pursuant to Civ.R. 10(D)(2), and that appellant failed to include an affidavit with her complaint. Pursuant to Civ.R. 10(D)(2)(c), the affidavit is required to "establish the adequacy of the complaint."

It does not follow, however, that a complaint which does not contain an affidavit of merit fails to state a claim, and is therefore subject to dismissal. A well-developed body of law establishes the remedy for the related situation in which a party fails to attach a written instrument to a pleading which includes a claim or defense founded on it, as required by Civ.R. 10(D)(1). "The proper procedure in attacking the failure of a plaintiff to attach a copy of a written

instrument *** is to serve a motion for a definite statement pursuant to Civ.R. 12(E)." *Point Rental Co. v. Posani* (1976), 52 Ohio App.2d 183, 186; see also *Natl. Check Bureau v. Buerger*, Lorain App. No. 06CA008882, 2006-Ohio-6673, ¶14; *Lorain Music Co v. Eidt*, Crawford App. No. 3-2000-17, 2000-Ohio-1799 and cases cited therein. We can conceive of no reason why the procedure for challenging a failure to comply with Civ.R. 10(D)(1) should not also apply to Civ.R. 10(D)(2); indeed, the very fact that they are grouped together implies that they should be treated alike. Both sections promote the same purpose: Even though Ohio is a notice pleading state, our public policy requires parties asserting these special kinds of claims to provide some minimal evidence to support them before the opposing party will be required to respond. Therefore, we hold that the proper remedy for failure to attach the required affidavit(s) is for the defendant to request a more definite statement. If the plaintiff fails to comply with an order to provide a more definite statement, "the court may strike the pleading to which the motion was directed, or make any other orders as it deems just, which would include involuntary dismissal with prejudice pursuant to Civ. R. 41(B)(1)." *Point Rental*, 52 Ohio App.2d at 186.

A defendant who fails to file a motion for a more definite statement before filing his answer has been held to have waived the right to assert the plaintiff's failure to attach a copy of a written instrument as a basis for dismissing the

complaint. See *Castle Hill Holdings, LLC v. Al Hut, Inc.*, Cuyahoga App. No. 86442, 2006-Ohio-1353, ¶29. Furthermore, Civ.R. 12(G) requires a party to join all available motions, so the filing of a motion to dismiss for failure to state a claim will generally waive the right to assert that a more definite statement is required. However, in light of the fact that the procedure for enforcing Civ.R. 10(D)(2) was not settled at the time the motion to dismiss was filed, defendants-appellees may request leave to amend their motion to seek a more definite statement.

We hold that the court erred by dismissing the complaint for failure to state a claim. We reverse and remand with instructions for further proceedings consistent with this opinion.

Reversed and remanded.

It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.



KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, P.J., and
CHRISTINE T. McMONAGLE, J., CONCUR

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Gerald E. Fuerst, Clerk of Courts

MONICA FLETCHER, ETC.

Appellant

COA NO.
88573

LOWER COURT NO.
CP CV-587892

COMMON PLEAS COURT

-vs-

UNIVERSITY HOSPITALS OF CLEVE., ETAL

Appellee

MOTION NO. 397703

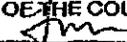
Date 07/02/2007

Journal Entry

APPELLEE'S MOTION FOR RECONSIDERATION IS DENIED. IN FINDING THAT A MOTION FOR A MORE DEFINITE STATEMENT SHOULD BE FILED, WE NECESSARILY CONCLUDED THAT THE SUFFICIENCY OF THE COMPLAINT WAS NOT AFFECTED BY THE ABSENCE OF AN AFFIDAVIT OF MERIT, DESPITE APPELLEE'S CONTRARY ARGUMENTS. THIS IS AN ISSUE OF FIRST IMPRESSION IN THIS STATE; APPELLEE HAS NOT DEMONSTRATED THAT CASE LAW FROM OTHER JURISDICTIONS INVOLVING THEIR OWN STATUTES OR COURT RULES WOULD AID OUR REVIEW OF OHIO CIV.R. 10(D)(2). HENCE, RECONSIDERATION WOULD NOT PERMIT ANY MORE THOROUGH ANALYSIS THAN THIS COURT DID INITIALLY.

RECEIVED FOR FILING

JUL - 2 2007

GERALD E. FUERST
CLERK OF THE COURT OF APPEALS
BY  DEP.

Presiding Judge COLLEEN CONWAY COONEY,
Concurs

Judge CHRISTINE T. MCMONAGLE, Concurs


Judge KENNETH A. ROCCO

NOTICE MAILED TO COUNSEL
FOR ALL PARTIES' COSTS TAXED