

IN THE  
SUPREME COURT OF OHIO

ROBERT THORTON, ) Supreme Court Case No. 2007-1588  
Appellee, )  
)  
-vs- ) ON APPEAL FROM THE  
) GEAUGA COUNTY COURT  
MONTVILLE PLASTICS & RUBBER, INC., ) OF APPEALS, ELEVENTH APPELLATE  
Appellant, ) DISTRICT  
)  
and )  
)  
ADMINISTRATOR OF THE BUREAU )  
OF WORKERS' COMPENSATION, ) Court of Appeals Case No. 2006-G-2744  
Appellee. )

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APPELLANT MONTVILLE PLASTICS & RUBBER, INC.'S,  
NOTICE OF DETERMINATION UPON MOTION TO CERTIFY A CONFLICT

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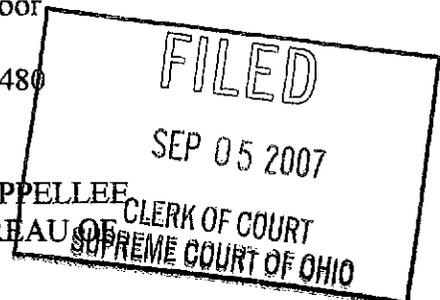
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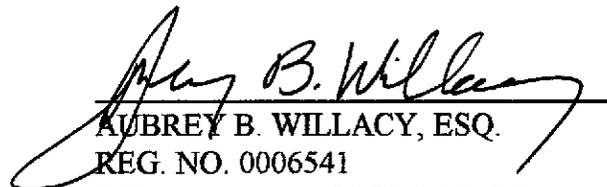
COUNSEL FOR DEFENDANT-APPELLEE  
ADMINISTRATOR OF THE BUREAU OF  
WORKERS' COMPENSATION



**APPELLANT MONTVILLE PLASTICS & RUBBER, INC.'S,  
NOTICE OF DETERMINATION UPON MOTION TO CERTIFY A CONFLICT**

In accordance with S. Ct. Prac. Rules II, Section 2(B)(3) and IV, Section 4(B), appellant Montville Plastics & Rubber, Inc., hereby gives notice that on August 28, 2007, the Geauga County Court of Appeals, Eleventh Appellate District, entered its determination upon appellant Montville Plastics & Rubber, Inc.'s, July 18, 2007, motion to certify a conflict, in Court of Appeals Case No. 2006-G-2744. In said determination, a copy whereof is hereto annexed, the Court of Appeals concluded that its July 9, 2007, judgment in Court of Appeals Case No. 2006-G-2744 was not in conflict with any of the decisions from other appellate districts to which appellant called the attention of the Geauga County Court of Appeals.

Respectfully submitted,

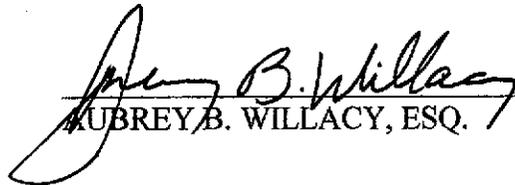
  
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SERVICE

Copies of defendant-appellant Montville Plastics & Rubber, Inc.'s, foregoing Notice of Determination upon Motion to Certify a Conflict have been served, by ordinary mail, upon Mitchell A. Stern, Esq., 27730 Euclid Avenue, Cleveland, Ohio 44132, counsel for plaintiff-appellee, and upon Virginia Egan Fisher, Esq., Assistant Attorney General, 615 Superior Avenue, West, 11<sup>th</sup> Floor, Cleveland, Ohio 44113, counsel for defendant-appellee, Administrator of the Bureau of Workers' Compensation, this 4<sup>th</sup> day of September, 2007.

  
AUBREY B. WILLACY, ESQ.

AUG 20 2007

STATE OF OHIO )  
 ) SS.  
COUNTY OF GEAUGA )

IN THE COURT OF APPEALS  
ELEVENTH DISTRICT

ROBERT THORTON,  
Appellee,

JUDGMENT ENTRY

CASE NO. 2006-G-2744

- vs -

MONTVILLE PLASTICS & RUBBER,  
INC.,

**FILED**  
IN COURT OF APPEALS

Appellant,

AUG 28 2007

ADMINISTRATOR, OHIO BUREAU OF  
WORKERS' COMPENSATION,

DENISE M. KAMINSKI  
CLERK OF COURTS  
GEAUGA COUNTY

Appellee.

On July 18, 2007, appellant, Montville Plastics & Rubber, Inc., filed a motion to certify this case to the Supreme Court of Ohio on the basis of a conflict pursuant to App.R. 25. No brief in opposition has been filed.

On July 9, 2007, this court issued its opinion in *Thorton v. Montville Plastics & Rubber, Inc.*, 11th Dist. No. 2006-G-2744, 2007-Ohio-3475, dismissing the appeal pursuant to App.R. 4(A).

Section 3(B)(4), Article IV, of the Ohio Constitution states that in order to certify a conflict, a judgment must be "in conflict" with a judgment of another court. In *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594, paragraph one of the syllabus, the Supreme Court of Ohio held that "[p]ursuant to Section 3(B)(4), Article IV of the Ohio Constitution and S.Ct.Prac.R. III, there must be an actual conflict between appellate judicial districts on a rule of law before

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certification of a case to the Supreme Court for review and final determination is proper.”

In its motion to certify, appellant argues that this court's decision is in conflict with the Second, Third, Fifth, Sixth, Eighth, and Tenth District Courts of Appeal. See *Lovins v. Kroger Co.*, 150 Ohio App.3d 656, 2002-Ohio-6526; *Goodwin v. Better Brake Parts, Inc.*, 3d Dist. No. 1-04-37, 2004-Ohio-5095; *Hughes v. Fed. Mogul Ignition Co.*, 5th Dist. No. 06 CA 27, 2007-Ohio-2021; *Reinbolt v. Natl. Fire Ins. Co. of Hartford*, 158 Ohio App.3d 453, 2004-Ohio-4845; *Smith v. Continental Airlines, Inc.*, 8th Dist. No. 81010, 2002-Ohio-4181; *Ciomek v. LTV Steel Co.* (Jan. 27, 2000), 8th Dist. Nos. 74646 and 74647, 2000 Ohio App. LEXIS 226; *Rice v. Stouffer Foods Corp.* (Nov. 6, 1997), 8th Dist. No. 72515, 1997 Ohio App. LEXIS 4872; *Yates v. Retail Services Inc.* (Dec. 10, 1998), 8th Dist. No. 74908, 1998 Ohio App. LEXIS 5928; *Horn v. Ford Motor Co.* (Dec. 12, 1991), 8th Dist. No. 59409, 1991 Ohio App. LEXIS 5925; *Robinson v. Kokosing Constr. Co., Inc.*, 10th Dist. No. 05AP-770, 2006-Ohio-1532 and *McKinney v. Bur. of Workers' Comp.*, 10th Dist. No. 04AP-1086, 2005-Ohio-2330.

Appellant asserts that in *Goodwin*, *Hughes*, *Smith*, *Ciomek*, *Rice*, *Yates*, *Horn*, *Robinson*, and *Kokosing*, the Third, Fifth, Eighth, and Tenth Districts determined that a trial court is not divested of jurisdiction over the subject matter of an employer's R.C. 4123.512 appeal by the claimant-plaintiff's filing of a Civ.R. 41(A)(1)(a) notice of dismissal.

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Appellant also raises a second issue for certification to the Supreme Court of Ohio. Appellant claims that in *Lovins* and *Reinbolt*, the Second and Sixth Districts determined that "a voluntary dismissal without prejudice normally is not a final, appealable order because it is not an adjudication on the merits and it leaves the parties as if the action never had been commenced."

We do not find that our position on either of these issues is in conflict with any of the districts listed by appellant. In *Thorton*, this court never addressed the issues that appellant states are in conflict with the other districts.

In *Thorton*, supra, at ¶4, we stated:

\*\*\*\* [T]he time-stamped notice of voluntary dismissal filed by [appellee] is dated October 19, 2006. The trial court was not required to issue a subsequent order as it did on October 31, 2006. In any event, even though the trial court did issue an entry on October 31, that order was a nullity since [appellee] voluntarily dismissed his complaint pursuant to Civ.R. 41(A)(1)(a) on October 19, 2006. Therefore, pursuant to App.R. 4(A), appellant had thirty days from that date to file its notice of appeal."

We further explained in *Thorton*, supra, at ¶3, that:

"Dismissals under Civ.R. 41(A)(1)(a) are self-executing. *Selker & Furber v. Brightman* (2000), 138 Ohio App.3d 710, 714. Furthermore, these dismissals are fully and completely effectuated upon the filing of a notice of voluntary dismissal by plaintiff, and the mere filing of the notice of dismissal automatically terminates the case without intervention by the court. *Id.* Because a Civ.R. 41(A)(1)(a) dismissal is self-executing, 'the trial court's discretion is not involved

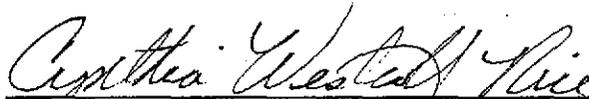
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in deciding whether to recognize the dismissal.' *Id.* Hence, when a Civ.R. 41(A)(1)(a) dismissal is filed, the time-stamped date on that document is controlling, not a subsequent court entry. See *Parker v. Cleveland Pub. Library*, 8th Dist. No. 83666, 2004 WL 1902549, 2004-Ohio-4492, at ¶16."

Therefore, it is our position that none of these cases is in conflict on "a rule of law," as each was decided on its own facts giving full consideration to the law. A factual distinction between cases is not a basis for conflict certification. *Whitelock*, *supra*, at 599. "This is so even though we may not agree with the ultimate judgment of a court of appeals on the facts before it." *Id.*

For the foregoing reasons, we do not believe that our decision in *Thorton* is in conflict with *Goodwin*, *Hughes*, *Smith*, *Ciomek*, *Rice*, *Yates*, *Horn*, *Robinson*, *Kokosing*, *Lovins* and *Reinbolt*.

Appellant's motion to certify a conflict is overruled.



PRESIDING JUDGE CYNTHIA WESTCOTT RICE  
FOR THE COURT

COLLEEN MARY O'TOOLE, J.,

MARY JANE TRAPP, J.,

concur.

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