

IN THE SUPREME COURT OF OHIO

YOSHANTA BECKETT, et al,

Appellees,

v.

RICHARD WARREN, et al,

Appellants.

) On Appeal from the
) Summit County Court
) of Appeals, Ninth
) Appellate District
) Court of Appeals
) Case No. CV 2006 07 4759
)
)
)

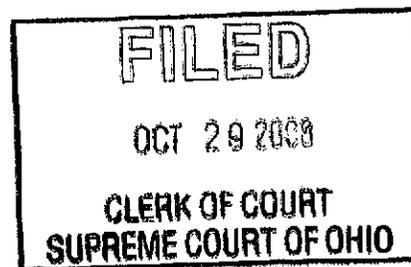
08-2106

NOTICE OF CERTIFICATION OF CONFLICT
BY THE NINTH DISTRICT COURT OF APPEALS

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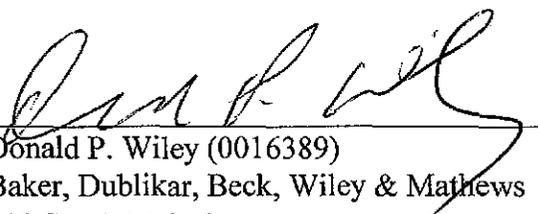


COUNSEL FOR APPELLEES, YOSHANTA BECKETT AND TIMESHA BECKETT

NOTICE OF CERTIFICATION OF CONFLICT
BY THE NINTH DISTRICT COURT OF APPEALS

Appellants, Richard Warren and Mary Truitt, hereby gives notice, pursuant to Supreme Court Rule of Practice IV, Section 4(A), that they timely filed a motion to certify a conflict in the Ninth District Court of Appeals below on September 29, 2008. The appellants' motion, regarding whether a plaintiff must elect at trial between a between a statutory cause of action or a negligence theory in a dog bite case, was granted on October 21, 2008. A copy of that Order is attached.

Respectfully submitted,



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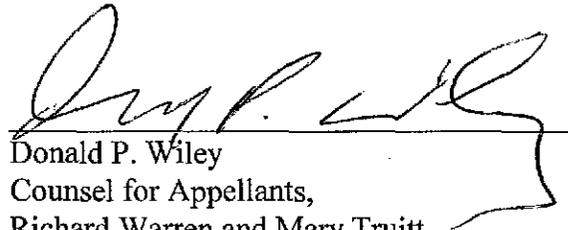
Richard Warren and Mary Truitt

PROOF OF SERVICE

A copy of the foregoing notice of pending motion to certify conflict was sent by ordinary U.S. mail this 28th day of October, 2008, to:

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COURT OF APPEALS
DANIEL M. HERRIGAN

STATE OF OHIO)

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IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT)

SUMMIT COUNTY
CLERK OF COURTS

YOSHANTA BECKETT, et al.

C.A. No. 23909

Appellants

v.

RICHARD WARREN, et al.

JOURNAL ENTRY

Appellees

Appellees have moved, pursuant to App.R. 25, to certify a conflict between the judgment in this case, which was journalized on September 17, 2008, and the judgment of the Sixth District Court of Appeals in *Rodenberger v. Wadsworth* (Nov. 25, 1983), 6th Dist. No. OT-83-18. Appellants have not responded to the motion.

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment *** is in conflict with the judgment pronounced upon the same question by any other court of appeals in the state[.]" "[T]he alleged conflict must be on a rule of law -- not facts." *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St. 3d 594, 596.

Appellant has proposed that a conflict exists among the districts on the following issue:

1. Whether "a plaintiff pursuing a claim for bodily injury damages in a case involving a dog are required to elect between pursuing a statutory claim under R.C. 955.28 and a common law claim for negligence."

We find that our decision is in conflict with the judgment of the Sixth District Court of Appeals in *Rodenberger*, supra. In *Rodenberger*, the Sixth District held as follows:

“In light of the holding in *Lisk*, supra, and *Warner*, supra, that a suit may be instituted either under the statute or at common law, and considering that evidence needed to establish the elements of a common law action are inadmissible under the statutory cause of action, we conclude that the trial court did not err in requiring the appellants to elect which theory they desired to pursue at trial.” Id. at *2.

In contrast, in the instant matter, this Court held:

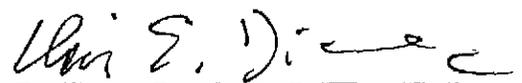
“It is true that in *Rodenberger*, supra, the Sixth District Court of Appeals held that a plaintiff must choose which cause of action he or she will pursue. In reaching that decision, however, the *Rodenberger* court relied on the dicta from the syllabus in *Warner*, supra.

“[W]e hold that a party may simultaneously pursue claims for a dog bite injury under R.C. 955.28 and common law negligence.” Id. at ¶10 and ¶13.

Accordingly, we find that a conflict exists. Appellees’ motion to certify a conflict is granted.



Judge



Judge