

IN THE SUPREME COURT OF OHIO

Richard Jaques,)	Case No. 09-0820
)	
Appellee,)	On Appeal from the Lucas County
)	Court of Appeals, Sixth Appellate
v.)	District,
)	Court of Appeals Case No L-08-1096
Patricia A. Manton,)	
)	
Appellant.)	

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT PATRICIA A. MANTON**

Paul R. Bonfiglio (0041484) Counsel
of Record
Alan B. Dills (0016474)
Vassar, Dills, Dawson & Bonfiglio,
LLC
420 Madison Ave., Ste. 1102
Toledo, Ohio 43604-1209
Tel.: (419) 241-9770
Fax: (419) 241-9771
E-mail: pbonfiglio@vassardills.com
adills@vassardills.com
Counsel for Appellant Manton

Michael D. Bell (0071325)
Kevin J. Boissoneault (0040180)
Gallon, Takacs, Boissoneault &
Schaffer Co., LPA
3516 Granite Circle
Toledo, OH 43617-1172
Tel.: (419) 843-2001
Fax: (419) 841-2608
E-mail: piattys@gallonlaw.com
Attorneys for Appellee Jaques

David L. Lester (0021914)
Ulmer Berne, LLP
1660 West 2nd Street, Suite 1100
Cleveland, OH 44113-1448
Tel.: (216) 583-7040
Fax: (216) 583-7041
E-Mail: dlester@ulmer.com
Co-Counsel for Appellant Manton

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SUPREME COURT OF OHIO

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Because no one pays the difference between amounts originally billed and amounts accepted as full payment, those amounts are not "benefits" under the collateral source rule. Hence, evidence of such write-offs is not precluded by R.C. 2315.20, and such evidence is admissible on the issue of reasonableness and necessity of charges for medical treatment and hospital care.....	9
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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT
GENERAL INTEREST**

This is a case of public and great general interest not only because the appellate court below improperly limited a holding of this Court, but also because the Court can now further delineate its position on an important evidentiary issue currently vexing courts and litigants throughout the state. That issue is whether, in a personal injury case, amounts billed and also the amounts accepted as full payment by medical providers are both admissible as evidence on the issue of whether the charges described in those medical bills are reasonable.

In Robinson v. Bates (2006), 112 Ohio St. 3d 17, 2006-Ohio-6362, 857 N.E. 2d 1195, this Court ruled that both amounts are admissible. Robinson held that because no one in fact pays the amounts written off the total medical bills, those amounts are not collateral benefits and are not subject to the collateral source rule. Accordingly, "both an original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care." Robinson v Bates, supra, syllabus ¶1. Notwithstanding that holding, the Lucas County Court of Appeals ruled that Robinson does not apply to those cases that arise after the effective date of R.C. §2315.20 and that involve payments subject to a contractual right of subrogation.¹

¹ R.C. §2315.20 provides in pertinent part:

(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a mandatory self-effectuating federal right of subrogation, a contractual right of subrogation, or a statutory right of subrogation....

This is a case of public and great general interest because this precise evidentiary issue arises in virtually every context where medical bills are incurred and presented as part of a claim for damages. Those contexts include claims involving personal injury, workers compensation, medical malpractice and products liability claims.

In addition, this case is of public and great general interest because courts across the state have inconsistently interpreted the impact of R.C. §2315.20 on Robinson. Courts in some jurisdictions apply the express holding of Robinson and permit admission of evidence of both amounts for jury consideration. Courts in other jurisdictions, including the decision appealed herein, have ruled that a footnote in the Robinson opinion evidenced this Court's intent to limit that case to causes arising before April 7, 2005 -- the effective date of the statute. Ignoring this Court's construction of that very statute in the body of its opinion, these courts—including the court of appeals below—then simply disregard Robinson's syllabus that removes amounts written off by definition from the reach of the collateral benefits rule. Based entirely on the Robinson footnote, these courts, including the court below, have ruled that amounts written off are properly excluded as collateral benefits under the new statute where those bills are subject to a contractual right of subrogation.²

The scope of the disparate rulings from trial courts across the state makes this issue one of public and great general interest. As of now, the Lucas County Court of Appeals appears to be the first appellate court to address this issue. As depicted in the table below, trial courts across the state are hopelessly divided.

² That footnote states:

"We note that, effective April 7, 2005, the General Assembly passed R.C. 2315.20, a statute titled 'Introduction of collateral benefits in tort actions.' The purpose of this statute was to set forth Ohio's statement of law on the collateral-source rule. This new collateral-benefits statute does not apply in this case, however, because it became effective after the cause of action accrued and after the complaint was filed." Robinson, supra at Pa.

Application of Robinson v. Bates Post 4/07/05³

<u>Districts</u>	<u>Applied (Case/Judge)</u>	<u>Denied (Case/Judge)</u>
<u>1st</u> Hamilton	<u>Hatfield/Helmick</u>	
<u>2nd</u> Montgomery	<u>Hudson/Tucker</u>	
<u>3rd</u> Allen Paulding Hancock Seneca	<u>Moll/Webb</u> <u>Chaskel/Routson</u> <u>Miller/Routson</u> <u>Cavey/Kelbley</u>	<u>Verhoff/Reed</u>
<u>4th</u> Athens Highland	<u>Ryan/Goldsberry</u> <u>Bauder/Goldsberry</u>	<u>Attard/Hoskins</u>
<u>5th</u> Stark Fairfield Licking	<u>Westfall/Haas</u> <u>Knight/Sinclair</u> <u>Yos/Martin</u> <u>Morris/Marcelain</u>	<u>Caudill/Berens</u> <u>Hudnall/Spahr</u>
<u>6th</u> Court of Appeals		<u>Jaques</u>
<u>7th</u>	<u>Unknown</u>	
<u>8th</u>		11 cases/9 judges
<u>9th</u> Lorain Summit	<u>Salmon/Cosgrove</u>	<u>Rivera/Miraldi</u> <u>Bender/Teodosio</u> <u>Herron/Hunter</u> <u>Ohlson/Stormer</u>
<u>10th</u> Franklin	<u>Kalinoski/Fais</u>	<u>Dimitroff/Connor</u>

³ Pursuant to Evid. R. 1006, the decisions reported on this summary will be made available to the opposition for inspection/copying at a mutually convenient time and place.

<u>11th</u> Lake Trumbull	<u>Spade/Logan</u>	<u>Dever/Lucci</u>
<u>12th</u> Clermont	<u>McKee/McBride</u>	
<u>USDC</u> ND, WD SD	<u>Schlegel/Katz</u>	<u>Queen/Hogan</u>

Some 20 courts from 8 appellate districts have ruled that Robinson does not apply to claims arising after April 7, 2005 . On the other hand, 14 courts representing 9 appellate districts—in addition to Judge Katz of the United State District Court--have followed Robinson's express holding and permitted both amounts into evidence. Perhaps best illustrating the disparity confronting litigants in Ohio, and even apart from the 6th district (which until Jaques had evidenced conflicting decisions even within Lucas County) courts in 5 districts --the 4th, 5th, 9th, 10th, and 11th, have ruled on both sides of this issue. This means that in those districts two judges in the same venue—in fact, possibly the same courthouse—can reach two different opinions on the very same issue and on the very same facts.

The significance of the legal and practical issues involved in this case warrant this Court's acceptance for review. Ensuring uniform application of this court's decisions—especially those decisions that interpret important legislation--is certainly a matter of public and great general interest. Moreover, because the differences in amounts billed and amounts accepted as full payment can be significant, accepting review of this case will

provide a final answer to the issue and thereby have a dramatic, significant, and practical impact on the evaluation, negotiation, and litigation of every claim filed in this state that involves medical bills.

Finally, this will continue to be an issue in every case in which a litigant presents as evidence a medical bill that has been paid by some form of insurance. If the court does not accept jurisdiction the issue will continue to spawn needless litigation until, inevitably, a conflict will arise between appellate districts that will require this Court's decision in any event. By taking jurisdiction now, this Court will have the opportunity to clarify and reaffirm its holding in Robinson and its relationship with R.C. §2315.20 for the benefit of the bench, the bar, and all Ohio citizens seeking a remedy through our courts. The court should not allow this important issue to fester in the lower courts, which will only create confusion and impede settlement of claims.

STATEMENT OF THE CASE AND FACTS

A. Nature of the case

This case asks this court to clarify yet again in the context of personal injury cases which of three amounts typically reflected in medical bills can be admitted into evidence on the issue of the reasonableness and necessity of medical and hospital care. The first amount is the total amount of charges billed by a provider. The second is the amount the provider accepts as full and final payment (usually an amount significantly less than the billed charges). The third figure is the difference in the amount of the original bill and the amount accepted as full payment.

This court has previously addressed this issue in Robinson v. Bates, supra. Prior to the passage of R.C. 2315.20, Ohio's collateral source rule prevented a jury from learning of payments made on a plaintiff's behalf where those payments emanated from a "collateral source;" i.e., someone other than the tortfeasor. See Robinson v Bates, supra 112 Ohio St 3d at ¶¶11, 12 (citations omitted). Under this so-called "collateral source" rule, only the amount of the original bill was admitted into evidence. See Robinson, at ¶11. In Robinson this court reviewed the recently passed collateral benefits statute (R.C. §2315.20) and expressly noted that the new statute evidenced a legislative intent to limit the collateral source rule in Ohio consistent with rulings from twenty-one other states that had modified or even abolished that rule in those states. Robinson at ¶14.

In analyzing the collateral source rule and the new statute, the Court issued two important rulings that addressed all three amounts commonly reflected in this context. First, the Court determined that both the original medical bill and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care. Robinson at syllabus 1. Second, the Court concluded that because no one pays the third amount--the difference in the original bill and the amount accepted as full payment--that amount is not a "benefit" subject to the collateral source rule and therefore admitting that evidence does not violate that rule. Robinson at syllabus 2. Even though the Court noted in a footnote that the new statute did not apply as the case before it arose before its effective date, the Court clearly analyzed that statute with respect to all three types of amounts typically encountered in this context, and its decision seemingly resolved the corresponding evidentiary issues.

Notwithstanding that decision, and contrary to the express language of its syllabus, some courts -- including the Court of Appeals below -- determined that the Court's footnote signaled its unannounced intent to limit Robinson v. Bates to those cases arising before the statute's April 7, 2005 effective date. In so ruling, these courts revert to pre-statute and pre-Robinson practice and refuse to allow evidence respecting the difference between an amount billed and the amount accepted as full payment. Other courts follow Robinson's holdings and admit into evidence both the amount billed and the amount accepted as full payment. This court should accept jurisdiction to reaffirm its holding in Robinson that both the original bill and the amount accepted as full payment are admissible on the issue of the reasonableness and necessity of medical treatment, and that the difference in those amounts is not subject to the collateral source statute.

B. Course of Proceedings

This case arises from an automobile collision that occurred on December 20, 2005 when Appellant Patricia Manton failed to yield pulling out from a stop sign and collided with a vehicle occupied by Appellee Richard Jaques and Robin Jaques. Robin Jaques settled her claims prior to trial; the claims of Richard Jaques proceeded to trial on February 20, 2008. Liability was admitted and the sole issues at trial were the proximate cause of any injury and the extent and amount of damages.

Medical bills Plaintiff proposed to submit for jury consideration included medical bills for services from various providers from December 28, 2005 through February 28, 2007. The charges billed by those facilities totaled \$21,874.80. Discovery also revealed, however, that the amount those providers accepted as full payment from Medical Mutual of Ohio totaled \$7,483.91.

On February 12, 2008 plaintiff filed his Motion in Limine arguing that Ohio's collateral source rule applied to preclude evidence of amounts written off by Plaintiff's health care providers. Plaintiff further argued that this Court's decision in Robinson v. Bates, supra, did not apply to claims arising after April 7, 2005—the effective date of R.C. §2315.20.

Defendant served her Memorandum in Opposition on February 15, 2008 and argued that Robinson v. Bates squarely addressed this issue and permits introduction of both the amounts billed by plaintiff's medical providers and the amounts written off and accepted as full and final payment. Both parties acknowledged a split in trial court decisions across the state on this issue.

The trial court granted Plaintiffs' motion on February 17, 2008 and the matter proceeded to trial on February 20th and 21st. The trial court precluded defendant's proffer of that evidence of the amount written off for the reasons advanced in its Order granting plaintiff's Motion in Limine. The jury was permitted to consider only the gross amount of medical bills and on February 21, 2008 returned a verdict for Plaintiff in the amount of \$25,000.00.

On March 10, 2008 defendant filed a Motion For New Trial to allow evidence on the reasonableness of plaintiff's medical expenses in accord with Robinson v. Bates. The court denied that motion on March 19, 2008.

Defendant appealed on April 3, 2008 and on March 20, 2009, after full briefing by the parties, the Court of Appeals denied that appeal, ruling that because a contractual right of subrogation existed as to the source of collateral benefits and because the case arose after the enactment of R.C. §2315.20, the trial court did not err in refusing to allow Defendant to

present evidence of the amounts written off and accepted as full payment of plaintiff's medical bills.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

- A. **Proposition of Law No. 1: Because no one pays the difference between amounts originally billed and amounts accepted as full payment, those amounts are not "benefits" under the collateral source rule. Hence, evidence of such write-offs is not precluded by R.C. §2315.20, and such evidence is admissible on the issue of reasonableness and necessity of charges for medical treatment and hospital care.**

This Court premised its decision in Robinson v. Bates on its fundamental determination that amounts written off in this context are not subject to the collateral benefit rule because no one pays the difference between an original bill and the amount accepted as full payment. As explained in Robinson, the crux of both the common law collateral source rule and of R.C. §2315.20 is exclusion of those amounts "payable as a benefit to the plaintiff" as a result of the damages arising from an injury. See Robinson v. Bates at ¶¶13, 14. After reviewing its earlier decisions as well as the newly enacted statute, this Court in Robinson concluded that since no one pays the amount "written off", that amount therefore cannot constitute "payment" of any "benefit" from a collateral source. Hence, admitting evidence of those write-offs does not violate the collateral source rule. See Robinson v. Bates, supra at ¶16. The Court explained:

The collateral-source rule does not apply to write-offs of expenses that are never paid....Because no one pays the write-off, it cannot possibly constitute payment of any benefit from a collateral source.... Because no one pays the negotiated reduction, admitting evidence of write-offs does not violate the purpose behind the collateral source rule. The tortfeasor does not obtain a credit because of payments made by a third party on behalf of the plaintiff. Robinson v. Bates, supra at ¶16.

As explained above, the appellate court below disregarded Robinson by limiting that decision to cases arising before the effective date of the new statute. Seemingly free from this Court's holdings, the appellate court then reduced its inquiry on this complex issue to a single question: does a contractual right of subrogation exist? Because the health insurer's agreement in this case (as is the case in most insurance contexts) contained such a provision, the court simply cited the new statute as a basis to exclude all amounts except the original bill.

That analysis is wrong for two reasons. First, nothing in Robinson limits the case to causes arising before the effective date of the statute. It would make no practical sense for this Court to issue an important decision destined to become obsolete within a matter of months. The Court's syllabus in Robinson directly targets the admission of this evidence and is nowhere limited to cases arising before the statute. The Court's syllabus is obviously controlling law on these issues and no authority exists to support a notion that a footnoted reference to the effective date of a statute construed in the body of a court's opinion somehow vitiates the Court's syllabus. Moreover, the enactment of R.C. §2315.20 did not change -- indeed, the statute reinforces -- the fundamental concept that the collateral source rule applies only to amounts "payable as a benefit".

Second, the appellate court ruling below suggests that this Court either did not construe the statute or that its opinion would have been different had the statute been in effect at the time the case was decided. In fact, this court fully construed both that new statute and its legislative history, including the General Assembly's express findings that "[t]wenty-one states have modified or abolished the collateral source rule". Robinson at ¶14.

In reaching its decision, this Court examined rulings from cases in Idaho, California, Florida and Pennsylvania that interpreted amounts written off by medical providers and likewise determined that those write-offs are not a "collateral source" nor a "benefit received". See Robinson, supra at ¶¶12-14. This Court further noted that, consistent with those holdings, both Florida and Idaho enacted statutes that limit or abolish the collateral source rule and further noted those jurisdictions joined 19 other states that likewise modified or abolished the collateral source rule. S.B. 80 §3(A)(7)(b). Robinson, supra at ¶14. Through that analysis the Court reasoned that the new statute likewise was intended to limit the scope and effect of the collateral source rule, and its decision is entirely consistent with those jurisdictions interpreting similar legislation. Accordingly, it is clear from the reasoning of this Court, its analysis of R.C. §2315.20, and the General Assembly's opinions cited by the Court with regard to S.B. 80, that both the General Assembly and the Supreme Court of Ohio are of one mind, that being that R.C. §2315.20 should not be interpreted to prohibit the introduction of evidence consistent with the holding expressed in Robinson v. Bates, supra.

B. Proposition of Law No. 2: Even if the Court of Appeals is correct in ignoring Robinson, amounts written off are still entirely admissible under R.C. §2315.20 because no contractual right of subrogation can exist for amounts that have never been paid.

As the appellate court noted, R.C. §2315.20 precludes a defendant from introducing evidence of "any amount payable as benefit to the plaintiff" where the source of that benefit has a contractual right of subrogation. See R.C. §2315.20. Simply put, that statute precludes evidence of collateral benefits payable to the plaintiff that are subject to a contractual right of subrogation. The intent of the statute is clear where the collateral

source payment is not accepted as full payment and the entire amount charged must be paid to the provider.

Yet that was not the result in this case, and the Court of Appeals decision in fact violates that statute. In this case plaintiff's health insurer paid \$7,483.91 of a \$21,874.80 bill. The provider accepted \$7,483.91 in full payment of its bill. The health insurer had a contractual right of subrogation for only the \$7,483.91 it had paid. Under the Court of Appeals' interpretation of the statute (and assuming that Robinson does not apply), the \$7,483.91 amount that was subject to a contractual right of subrogation should not have been admitted. Moreover, and again assuming Robinson does not apply, amounts written off are still admissible under the statute since no one paid those amounts and no right of subrogation -- contractual or otherwise -- applies to preclude that evidence under the statute. As a result, the appellate court ruling to the contrary conflicts with both Robinson v. Bates and the express language of R. C. §2315.20.

CONCLUSION

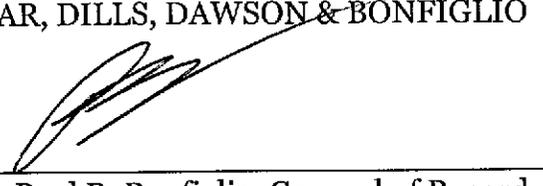
The Court of Appeals decision is wrong for two reasons. First, the appellate court ignored this Court's holding in Robinson v. Bates in determining that amounts written off and paid by no one are in fact collateral benefits. According to this Court's holding in Robinson, amounts written off are not collateral benefits and both the original bill and the amount accepted as full payment should be admitted.

Second, even if this Court's decision in Robinson does not apply, the appellate court's decision still conflicts with the statute because no contractual right of subrogation can exist for amounts that no one paid. Admission of those amounts on the issue of reasonableness and necessity therefore is not precluded by the statute.

For all the foregoing reasons, Appellant asks the Court to exercise jurisdiction over this appeal and reverse the decision of the Sixth District Court of Appeals.

Respectfully submitted,

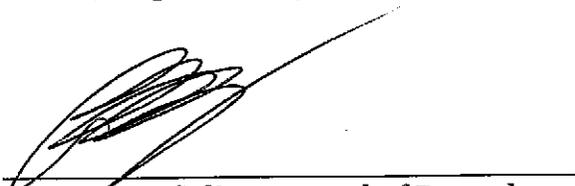
VASSAR, DILLS, DAWSON & BONFIGLIO

By: 

Paul R. Bonfiglio, Counsel of Record
Attorneys for Appellant

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing Memorandum was sent this 5th day of May, 2009, by ordinary U.S. Mail to Michael D. Bell, Esq., Attorney for Plaintiffs, 3516 Granite Circle, Toledo, Ohio 43617-1172.


Paul R. Bonfiglio, Counsel of Record
Attorney for Appellant
Patricia A. Manton

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

Richard Jaques

Court of Appeals No. L-08-1096

Appellee

Trial Court No. CI-06-7626

v.

Patricia A. Manton

DECISION AND JUDGMENT

Appellant

Decided: MAR 20 2009

Michael D. Bell and Kevin J. Boissoneault, for appellee.

Paul R. Bonfiglio, for appellant.

OSOWIK, J.

{¶ 1} This is an appeal from a judgment of the Lucas County Court of Common Pleas, following a jury trial, in which the trial court barred the introduction of evidence as to the reduction of certain medical bills pursuant to R.C. 2315.20. Pursuant to 6th Dist.Loc.App.R. 12(A), we hereby sua sponte transfer this matter to our accelerated docket and render our decision.

E-JOURNALIZED

MAR 20 2009

{¶ 2} This case arose as a personal injury action following a traffic accident. Liability was undisputed at trial; however, appellant, citing *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362, sought to introduce evidence that appellee's medical providers accepted reduced payments pursuant to a contract with appellee's insurer, thereby reducing the reasonable value of his medical expenses. The trial court denied appellant's request, citing R.C. 2315.20, Ohio's Collateral Source Rule. The jury awarded appellee damages in an amount less than the total of his medical bills. Nevertheless, appellant filed a motion for a new trial, which the trial court denied. A timely notice of appeal was filed in this court on April 3, 2003.

{¶ 3} On appeal, appellant sets forth the following two assignments of error:

{¶ 4} "1. The trial court erred by precluding [appellant's] proffered evidence challenging the reasonableness of [appellee's] medical bills based on the Supreme Court's decision *Robinson v. Bates* (2006), 112 Ohio St.3d 17.

{¶ 5} "2. The trial court's decision to deny [appellant's] motion for new trial for the reason that *Robinson v. Bates* does not apply to cases arising after the April 7, 2005 effective date of R.C. §2315.20 is erroneous as a matter of law."

{¶ 6} In both of his assignments of error, appellant urges this court to apply the rule stated in *Robinson*, supra. Accordingly, we will address them together.

{¶ 7} In *Robinson*, the Supreme Court of Ohio held that "[b]oth an original medical bill rendered and the amount accepted as full payment are admissible to prove the reasonableness and necessity of charges rendered for medical and hospital care." *Id.*,

paragraph one of the syllabus. R.C. 2315.20, which became effective after the cause of action in *Robinson* accrued¹, states, in relevant part, that:

{¶ 8} "(A) In any tort action, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the damages that result from an injury, death, or loss to person or property that is the subject of the claim upon which the action is based, except if the source of collateral benefits has a * * * contractual right of subrogation * * *."

{¶ 9} It is undisputed that this case arose after the enactment of R.C. 2315.20. It is further undisputed that the source of medical payments that appellant attempted to introduce at trial were subject to a contractual right of subrogation. Accordingly, the application of the collateral source rule is controlled by R.C. 2315.20, and not by the rule set forth in *Robinson v. Bates*, supra.

{¶ 10} On consideration, we find that the trial court did not err by refusing to allow appellant to present evidence of the reduced amount accepted as full payment for appellee's medical bills to the jury, or by denying appellant's motion for a new trial on that same basis. Appellant's two assignments of error are not well-taken.

{¶ 11} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for

¹The Ohio Supreme Court recognized that R.C. 2315.20 did not apply in *Robinson*, because the statute became effective "after the cause of action [in that case] accrued and after the complaint was filed." *Id.*, ¶ 10, fn 1.

the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

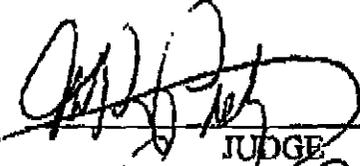
JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

Arlene Singer, J.

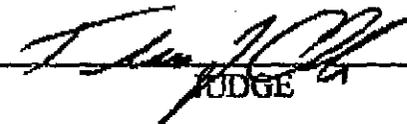
Thomas J. Osowik, J.
CONCUR.



JUDGE



JUDGE



JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.