
In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
ALLEN COUNTY, OHIO
CASE NO. 01-08-065

JEFFREY GEESAMAN, et al.,
Plaintiffs-Appellees,

v.

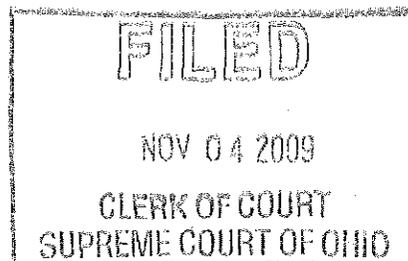
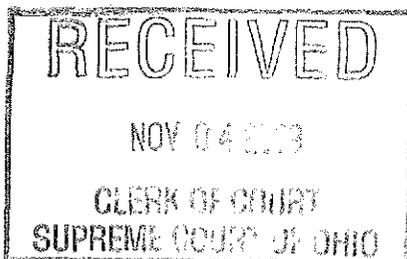
ST. RITA'S MEDICAL CENTER, et al.,
Defendants,

and

JOHN COX, D.O.,
Defendant-Appellant.

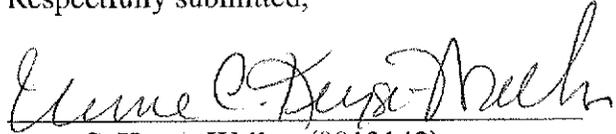
NOTICE OF DENIAL OF MOTION TO CERTIFY A CONFLICT

Appellant John Cox, D.O., pursuant to S.Ct. Prac. R. IV, Section 4(B), hereby gives notice that his Motion to Certify a Conflict was denied by the Third District Court of Appeals. A copy of the decision denying the motion (as well as pending motions for reconsideration, but



correcting errata in the earlier decision), and the judgment correcting errata are attached hereto as Exhibits A and B.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 2nd day of November, 2009, by U.S. Mail,

postage prepaid, upon the following:

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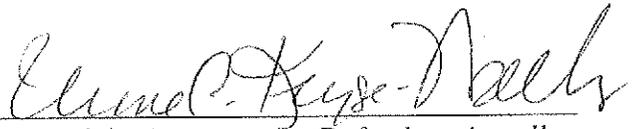
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American Medical Association, and
Ohio Osteopathic Association*


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John Cox, D.O.*

COURT OF APPEALS
FILED

2009 OCT 21 PM 1:08

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

W. D. STALEY-BURLE
CLERK OF COURTS
ALLEN COUNTY, OHIO

JEFFREY GEESAMAN, ET AL.,

PLAINTIFFS-APPELLANTS,

CASE NO. 1-08-65

v.

ST. RITA'S MEDICAL CENTER, ET AL.,

**J U D G M E N T
E N T R Y**

DEFENDANTS-APPELLEES.

This cause comes on for determination of the application for reconsideration and application to certify a conflict filed by Appellee John Cox, D.O., with response briefs in opposition, and the motion for clarification and/or reconsideration filed by Appellee Lima Radiology Associates, Inc., with response briefs in opposition.

Upon consideration of same, the court finds that the application for reconsideration filed by Dr. Cox fails to call to the attention of the court an obvious error in the decision or raise an issue not properly considered in the first instance. *Garfield Hts. City School Dist. v. State Bd. of Edn.* (1992), 85 Ohio App.3d 117; *Columbus v. Hodge* (1987), 37 Ohio App.3d 68. The application sets forth the same arguments that were considered and decided properly in the first instance.

The court further finds that there is no true and actual conflict on a rule of law between the decision in the instant case and the decisions in *Haney v. Barringer*, 7th

50 o.r.

EXHIBIT A

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Dist.No. 06MA141, 2007-Ohio-7214; *McDermott v. Tweel*, 151 Ohio App.3d 763; *Liotta v. Rainey*, (Nov. 22, 2000), 8th Dist.No. 77396; *Wright v. Suzuki Motor Corp.*, 4th Dist.No. 03CA2, 03CA3, 03CA4, 2005-Ohio-3494; and *Faulk v. Internatl. Bus. Mach. Corp.*, (Sept. 7, 2001), 1st Dist.Nos. C-000765, C-000778. The factual distinctions in these cases result in a rule of law that is not in conflict with the instant case. See *Whitelock v. Gilbane Bldg. Co.* (1993), 66 Ohio St.3d 594. Accordingly, the applications of Appellee Cox are not well taken.

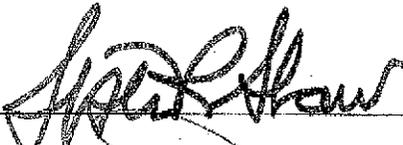
In regard to the motion for clarification and/or reconsideration of Lima Radiology Associates, the court finds that it is not necessary to grant reconsideration and vacate the entire opinion. However, there does appear to be a misstatement in "Footnote 2" and, although it should be evident to the parties, an ambiguity in the concluding paragraph of the opinion, Paragraph #63, that is worthy of clarification to remove any doubt. For this reason the request for clarification is well taken and an Erratum to the opinion shall issue contemporaneously herewith.

It is therefore **ORDERED** that the application for reconsideration and application to certify a conflict filed by Appellee John Cox, D.O., be, and the same hereby are, overruled.

It is further **ORDERED** that the motion for clarification and/or reconsideration filed by Appellee Lima Radiology Associates, Inc. be, and hereby is, granted to the

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extent that an erratum to the opinion shall issue correcting "Footnote 2" in Paragraph #12, and Paragraph #63.





James A. Broger

JUDGES

DATED: October 21, 2009
/jlr

COURT OF APPEALS
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IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY

SINA C. STALEY-BURLE
CLERK OF COURTS
ALLEN COUNTY, OHIO

JEFFREY GEESAMAN, ET AL.,

PLAINTIFFS-APPELLANTS,

CASE NO. 1-08-65

v.

ST. RITA'S MEDICAL CENTER, ET AL.,

ERRATUM
TO
OPINION

DEFENDANTS-APPELLEES.

Appeal from Allen County Common Pleas Court
Trial Court No. CV2006 0914

Judgment Affirmed in Part, Reversed in Part, and Cause Remanded

Date of Decision: August 10, 2009

Footnote 2 in Paragraph #12 filed on August 10, 2009 incorrectly reads:

The complaint names Lima Radiology Associates ("LRA") under the doctrine of respondeat superior as the employer of Dr. Cox or that Dr. Cox was the owner of LRA. The judgment entry on the jury's verdict indicates that LRA was dismissed pursuant to the verdict. However, LRA's involvement was not mentioned during the trial nor was there a finding by the jury in regards to LRA. Rather, all parties acted as if the case were solely against Dr. Cox and Dr. Almudallal.

Footnote 2 in Paragraph #12 filed on August 10, 2009 is hereby corrected to read:

The complaint names Lima Radiology Associates ("LRA") under the doctrine of respondeat superior as the employer of Dr. Cox or that Dr. Cox was the owner of LRA. However, LRA's liability under the doctrine of respondeat superior was not a question before the jury because LRA admitted in its answer to the plaintiffs' complaint that Dr. Cox was its employee at the time of Mr. Geesaman's injury and was acting

EXHIBIT B

within the scope of that employment when he examined Mr. Geesaman's MRI and concluded that the MRI was normal. LRA denied, however, that Dr. Cox was negligent and/or that he caused the plaintiffs' injuries. Given these admissions and denials, LRA's liability was dependent upon the jury's verdict as to Dr. Cox. In accordance with the jury's verdict as to Dr. Cox, the judgment entry on the jury's verdict indicates that both Dr. Cox and LRA were dismissed pursuant to the verdict. Because LRA's liability is dependent solely upon the liability of Dr. Cox, throughout this opinion our rulings on the assignments of error as to Dr. Cox also apply to LRA.

Paragraph #63 filed on August 10, 2009 incorrectly reads; "Based on all of the foregoing, the judgment of the trial court in favor of Dr. Almudallal is affirmed, the judgment in favor of Dr. Cox is reversed, and the cause remanded to the trial court for further proceedings consistent with this opinion."

Paragraph #63 filed on August 10, 2009 is hereby corrected to read; "Based on all of the foregoing, the judgment of the trial court in favor of Dr. Almudallal is affirmed, the judgment in favor of Dr. Cox and Lima Radiological Associates is reversed, and the cause remanded to the trial court for further proceedings consistent with this opinion."

SHAW, ROGERS and BROGAN, J.J., concur.

(2nd District Court of Appeals Judge James Austin Brogan, sitting by Assignment)

/jlr