

ORIGINAL

In the Supreme Court of Ohio

NEW DESTINY TREATMENT CENTER, INC., et al.,

Plaintiff-Appellee,

v.

E. MARIE WHEELER, et al.,

Defendants-Appellants.

DISCRETIONARY APPEAL FROM THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
CASE No 24404

FILED
MAR 24 2010
CLERK OF COURT
SUPREME COURT OF OHIO

NOTICE OF APPELLATE COURT'S DETERMINATION
OF APPLICATION FOR RECONSIDERATION

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NOW COMES Defendant-Appellant Roderick Linton, LLP and hereby gives notice that the Ninth Appellate District has denied Roderick Linton's Application for Reconsideration thereby declining to consider the statute of limitations argument that was raised properly in Roderick Linton's appellate brief as an alternative ground to affirm the trial court's summary judgment. A copy of the March 18, 2010 Judgment Entry denying the Application for Reconsideration is attached hereto.¹

The statute of limitation issue that the Ninth Appellate District "elect[ed] not [to] consider" in the reconsideration entry is relevant to Roderick Linton's Proposition of Law No. III raised in its discretionary appeal filed with this Court on February 16, 2010. The pendency of the reconsideration motions was pointed out in Plaintiffs-Appellees' jurisdictional memorandum at page 9. This notice is being filed to inform the Court that reconsideration has been denied.

Respectfully submitted,



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¹ The Judgment Entry also denied a comparable Motion for Reconsideration filed by Defendant-Appellant E. Marie Wheeler.

PROOF OF SERVICE

A copy of the foregoing *Notice of Appellate Court's Determination of Application for Reconsideration* was sent by regular U.S. Mail, postage pre-paid, this 23rd day of March, 2010 to the following:

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APPENDIX

COURT OF APPEALS
 DANIEL J. JOHNSON
 IN THE COURT OF APPEALS FOR SUMMIT COUNTY, OHIO
 NINTH APPELLATE DISTRICT

7:00 MAR 18 PM 2:33
 SUMMIT COUNTY
 CLERK OF COURTS

NEW DESTINY TREATMENT
 CENTER, INC., ET AL.

Plaintiffs-Appellants

-vs-

E. MARIE WHEELER, ET AL.

Defendants-Appellees

JUDGMENT ENTRY

Case No. 24404

This matter came before the Court on the motion of defendant-appellee E. Marie Wheeler and application of defendant-appellee Roderick Linton, LLP for reconsideration of our decision of December 31, 2009, entitled *New Destiny Treatment Center, Inc. v. E. Marie Wheeler, et al.*, Summit App. No. 24404, 2009-Ohio-6956.

Applications for reconsideration are governed by App.R. 26. The test generally applied to an application for reconsideration is whether the application calls attention to an obvious error in the decision or raises an issue that the court did not properly consider in the first instance. *Matthews v. Matthews* (1981), 5 Ohio App.3d 140, paragraph two of the syllabus; *Fleisher v. Ford Motor Co.*, 10th Dist. No. 09AP-139, 2009-Ohio-4847, ¶ 2. App.R. 26(A) was not designed for use in instances where a party simply disagrees with the conclusions and logic of the appellate court. *In re Estate of Phelps*, 7th Dist. No. 05 JE 19, 2006-Ohio-1471, ¶ 3.

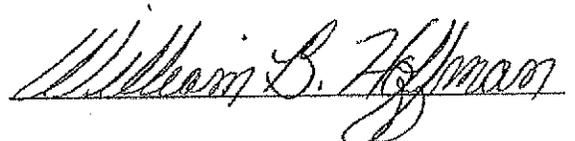
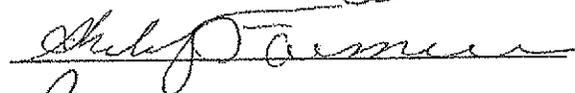
Appellees base their requests for reconsideration upon the allegation this Court did not consider the independent grounds for the affirmance of the trial court's decision, to wit: Appellants' legal malpractice claim was barred by the one year statute of limitations set forth in R.C. 2305.11(A). Both Appellees argued this defense in their respective briefs to this Court. In fact, Appellee Roderick Linton raised such in a cross-assignment of error.

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In granting summary judgment in favor of Appellees, the trial court found an attorney/client relationship never existed between the parties. The trial court did not address Appellees' statute of limitations argument. Because the trial court did not address this issue, we elect not consider it for the first time on appeal. See *Murphy v. Reynoldsburg* (1992), 65 Ohio St.3d 356, 360, 604 N.E.2d 138; *Cooper v. Jones*, Jackson App. No. 05CA7, 2006-Ohio-1770; *Bentley v. Pendleton*, Pike App. No. 03CA722, 2005-Ohio-3495 (declining to consider issues raised in cross-assignments of error when trial court had not addressed them); *Bohl v. Travelers Ins. Group*, Washington App. No. 03CA68, 2005-Ohio-963 (declining to consider issues raised in cross-assignments of error when trial court had not addressed them); *Farley v. Chamberlain*, Washington App. No. 03CA48, 2004-Ohio-2771 (remanding matter to the trial court so that it, not appellate court, would first consider the issue).

Based upon the foregoing, we find Appellees have not satisfied the test set forth in *Matthews v. Matthews*, supra. Accordingly, we overrule Appellee E. Marie Wheeler's Motion for Reconsideration, and Appellee Roderick Linton's Application for Reconsideration.

It is so ordered.

JUDGES