

ORIGINAL

10-0951

FILED
MAY 27 2010
CLERK OF COURT
SUPREME COURT OF OHIO

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM MOHAT, <i>et al.</i> ,)	CASE NO.: 1:09 CV 688
)	
Plaintiffs,)	
)	
v.)	JUDGE DONALD C. NUGENT
)	
MENTOR EXEMPTED VILLAGE SCHOOL)	
DISTRICT BOARD OF EDUCATION, <i>et al.</i> ,)	
)	
Defendants.)	<u>ORDER CERTIFYING QUESTION</u>
)	<u>OF STATE LAW TO THE OHIO</u>
)	<u>SUPREME COURT</u>
)	

This matter is before the Court on Defendants' Motion For Judgment on the Pleadings. (ECF #14). Plaintiff filed a Response to Defendants' Motion, and Defendants filed a Reply. (ECF #18, 21). The Court has carefully considered all of the pleadings, motions, briefing, and relevant law, and finds that there exists a controlling issue of state law for which there is no controlling precedent in the decisions of the Ohio Supreme Court, for which there is contradictory authority in the lower courts of Ohio, and for which there is contradictory language within the controlling Ohio statute. Therefore, pursuant to Ohio Supreme Ct. Prac. Rule XVIII, this Court hereby certifies the question to the Ohio Supreme Court for consideration.

I hereby certify that this instrument is a true and correct copy of the original on file in my office.
Attest: Geri M. Smith, Clerk
U.S. District Court
Northern District of Ohio

By: Katherine Kf
Deputy Clerk

STANDARD

Ohio Supreme Court Practice Rule XVIII states that “a federal court may certify questions to the Supreme Court of Ohio when a state law is at issue. That Rule states in pertinent part:

The Supreme Court may answer a question of law certified to it by a court of the United States. This rule may be invoked when the certifying court, in a proceeding before it, determines there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court, and issues a certification order.

Federal courts have utilized this Rule freely when the moving party demonstrates both the determinative and lack of controlling precedent prongs of the Rule.

PROCEDURAL and FACTUAL HISTORY

The Plaintiffs filed this action in March of 2009 on their own behalf, and on behalf of the Estate of Eric Mohat (their minor son). The Complaint seeks declaratory, injunctive, and monetary relief against the Mentor Public School District, Jacqueline A. Hoynes (Superintendent of the Mentor Public School District), Joesph Spiccia (Principal of Mentor High School), and Thomas Horvath (Teacher at Mentor High School) for alleged violations of their civil rights. (ECF #1). The Complaint alleges that Eric Mohat, a seventeen year old student at Mentor High School, was regularly bullied and harassed at school; that the school and, in particular, Mr. Horvath knew about the bullying and harassment; that the school did nothing to intervene or alleviate the problem; and, that as a result of the constant bullying and harassment, Eric Mohat eventually committed suicide. Plaintiffs allege that as a result of these circumstances, they have been deprived of their parental rights without due process; that they were deprived of their right

to companionship and Eric was deprived of his right to life in violation of 42 U.S.C. §1983 (Monell claim); that the school was negligent, and has violated Title IX, 20 U.S.C. §1681; and, that the schools actions or failures to act were wonton, reckless, and malicious.

This lawsuit was filed on March 26, 2009. The Cuyahoga County Probate Court named Janis Mohat personal representative of Eric Mohat's estate on June 25, 2009. There is no dispute that Eric's estate was not established until June of 2009 - after the filing of the lawsuit, and after the running of the statute of limitations for the estate. Further, there is no dispute that the estate was mistakenly opened in Cuyahoga County rather than Lake County, the county where Eric resided at the time of his death. Plaintiffs admit that this was in error and that have taken steps to have Mrs. Mohat duly appointed as administrator in the proper county (Lake County). Plaintiffs recently filed a supplement to their Response in Opposition with the Court indicating that Mrs. Mohat was duly appointed as administrator of her son's estate in Lake County on November 9, 2009.

Defendants contend that the Estate's claims are time-barred and void, and that 42 U.S.C. §1983 and Title IX do not support causes of action on behalf of his parents. Moreover, Defendants argue that a school's failure to recognize a student's suicidal tendencies stemming from bullying do not create liability under any of the Plaintiffs legal theories. Plaintiffs contend that under Ohio law, the formation of the estate, and the appointment of Mrs. Mohat as administrator, relates back to the filing of the Complaint. Therefore, Plaintiffs contend that the Complaint is not barred by the two year statute of limitations and the claims of the estate should be allowed to go forward on the merits.

QUESTION OF LAW TO BE ANSWERED

The Court seeks a ruling by the Ohio Supreme Court as to:

Whether, under Ohio law a wrongful death action filed on behalf of a decedent before an estate is legally established, by someone who is not a legally appointed administrator or personal representative (i.e. is without legal standing to sue on the decedent's behalf), are barred by the statute of limitations if later, after the running of the statute of limitations but before resolution of the claims, an estate is legally established and an administrator or personal representative is duly appointed and named in the Complaint - or whether the formation of the estate and the appointment of the administrator relates back to the original filing of the claims.

The answer to this question will determine whether or not the claims made by the estate may proceed, or whether they are time-barred pursuant to the applicable statute of limitations.

The Ohio Supreme Court has clearly held that a relative who has not been legally appointed as a personal representative of the decedent's estate lacks standing to pursue an action on behalf of the estate to its conclusion. It is less clear, however, whether, under Ohio law, someone may file suit on behalf of the estate as a sort of "place holder" to avoid being barred by the statute of limitations, so long as an estate is formed and a personal representative is appointed prior to the resolution of the action.

Both parties in the instant case cite to the Supreme Court of Ohio's opinion in *Ramsey v. Neiman*, 69 Ohio St.3d 508 (1994) in support of their position on this issue. The Court was

unanimous in its judgment in that case, but was split on its reasoning. The lead opinion, which is not actually the majority opinion in this instance, held that “[a] cause of action in wrongful death arising under R.C. Chapter 2125 must be brought in the name of a person appointed by a court to be the administrator, executor, or personal representative of the decedent’s estate.” The lead opinion addressed the issue of whether a later appointed administrator could relate back to a timely filing by someone who lacked standing to bring the action in order to save the case from dismissal on statute of limitations grounds. The Court distinguished the case before it from other cases that had allowed actions to proceed, indicating that there was no clear precedent that would address the facts of the case before it, but refused to answer the specific question because the question was based on a hypothetical situation not actually present in the case before it.

The concurring opinion, which actually constituted the majority opinion based on the number of judges who signed on, did not find any requirement in R.C. 2125.02(A)(1) that the person initiating a wrongful death lawsuit be a legally appointed representative of an estate. Those Justices who joined in that opinion stated their belief that a personal representative “must be court-appointed after the complaint has been filed, but before any judgment is entered or settlement is reached.” *Ramsey v. Neiman*, 69 Ohio St.3d 508 (concurring opinion). They also indicated, without providing any reason or legal basis, that the summary judgment stage would be an appropriate time to determine whether plaintiffs had or would obtain proper court appointment after filing their complaints. Although this perspective was held by the slim majority of the Court in 1994, the interpretations and guidelines set forth in that opinion were dicta in the underlying case, and therefore are not controlling precedent for us to follow.

In trying to come to a determination on this issue, this Court has also reviewed Ohio’s

statute on wrongful death and finds the language in O.R.C. §2125.02 to be unclear with regard to the issue set forth above. Section 2125.02(A)(1) states that: “a civil action for wrongful death shall be brought in the name of the personal representative of the decedent for the exclusive benefit of the surviving spouse, the children, and the parents of the decedent...” This would tend to support the argument that a wrongful death action cannot be brought by anyone other than a legally appointed personal representative, making such an action void from its inception and ineffective at tolling the statute of limitations.

Section 2125.02 © however, lends support to the alternative argument, stating that “[a] personal representative appointed in this state, with the consent of the court making the appointment and at any time **before or after the commencement of a civil action for wrongful death**, may settle with the defendant the amount to be paid.” *Id.* (Emphasis added.) The highlighted language in this section would seem superfluous if, in fact, an action brought by anyone other than the legally appointed personal representative were void at the time of filing.

The lower courts in Ohio offer no additional clarity on the issue. The ninth district has held that R.C. §2125.02 is to be construed liberally, and that generally the appointment of an administrator is deemed to relate back to the time of filing of a complaint. *Stone v. Phillips*, 1993 Ohio App. LEXIS 3989 (9th Dist. 1993). Conversely, the Fifth District has held that an action for wrongful death must be brought in the name of the personal representative of the decedent, and if it is not, neither Rule 17 nor the doctrine of relation back will apply to save the action from an expired statute of limitations if the decedent’s representative is added after the statute has run. *Gotke v. Diebold, Inc.*, 1990 Ohio App. LEXIS 3564 (5th Dist. 1990).

PARTIES AND LEGAL COUNSEL

Pursuant to the requirements of Sect. R. XVIII, Section 2 (C),(D), and (E), the Court hereby designates the Defendant, Mentor Exempted Village School District Board of Education as the moving party and identifies the parties and their counsel below.

Plaintiffs:

- (1) William Mohat
- (2) Janis Mohat, individually
- (3) Janis Mohat, on behalf of the Estate of Eric Mohat

Plaintiffs are represented by Kenneth D. Myers, 6100 Oak Tree Blvd., Ste. 200, Cleveland, OH 44131. Mr. Myers phone number is (216) 241-3900.

Defendants:

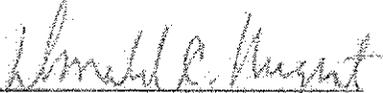
- (1) Mentor Public School District Board of Education
- (2) Jacqueline Hoynes
- (3) Joseph Spiccia
- (4) Thomas M. Horvath

Defendants are represented by David Kane Smith, Krista K. Kleim, and Lindsay F. Gingo, all of Britton, Smith, Peters & Kalail - Independence, 3 Summit Park Drive, Ste. 400, Independence, OH 44131. Their phone numbers are (216) 503-5055, (216) 642-0323, and (216) 503-5058, respectively.

CONCLUSION

For all of the reasons set forth above, the Court hereby certifies the above stated question to the Ohio Supreme Court for its consideration and determination. The remainder of the case is stayed, pending a decision by the Ohio Supreme Court on this certification order.

IT IS SO ORDERED.


DONALD C. NUGENT
United States District Judge

DATED: January 29, 2010

Cat03, Perelman, Standard, Stay

U.S. District Court
Northern District of Ohio (Cleveland)
CIVIL DOCKET FOR CASE #: 1:09-cv-00688-DCN

Mohat et al v. Mentor Public School District Board of
 Education et al
 Assigned to: Judge Donald C. Nugent
 Cause: 42:1983 Civil Rights Act

Date Filed: 03/26/2009
 Jury Demand: Plaintiff
 Nature of Suit: 440 Civil Rights: Other
 Jurisdiction: Federal Question

Plaintiff**William Mohat**

represented by **Kenneth D. Myers**
 6100 Oak Tree Blvd.
 Ste. 200
 Cleveland, OH 44131
 216-241-3900
 Fax: 216-986-2730
 Email: kdmy@aol.com
ATTORNEY TO BE NOTICED

Plaintiff**Janis Mohat**

*On behalf of themselves and on behalf
 of the Estate of
 other*
 Eric Mohat

represented by **Kenneth D. Myers**
 (See above for address)
ATTORNEY TO BE NOTICED

V.

Defendant**Mentor Public School District Board
of Education**

represented by **David Kane Smith**
 Britton, Smith, Peters & Kalail
 -Independence
 Ste. 400
 3 Summit Park Drive
 Independence, OH 44131
 216-503-5055
 Fax: 216-503-5065
 Email: dsmith@ohioedlaw.com
ATTORNEY TO BE NOTICED

I hereby certify that this instrument is a true and
 correct copy of the original on file in my office.
 Attest: Geri M. Smith, Clerk
 U.S. District Court
 Northern District of Ohio

By: Katherine Kij
 Deputy Clerk

Krista K. Keim
 Britton, Smith, Peters & Kalail
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 3 Summit Park Drive

Independence, OH 44131
216-642-0323
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ATTORNEY TO BE NOTICED

Lindsay F. Gingo
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Email: lgingo@ohioedlaw.com
ATTORNEY TO BE NOTICED

Defendant

Jacqueline Hoynes

represented by **David Kane Smith**
(See above for address)
ATTORNEY TO BE NOTICED

Krista K. Keim
(See above for address)
ATTORNEY TO BE NOTICED

Lindsay F. Gingo
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Joseph Spiccia

represented by **David Kane Smith**
(See above for address)
ATTORNEY TO BE NOTICED

Krista K. Keim
(See above for address)
ATTORNEY TO BE NOTICED

Lindsay F. Gingo
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Thomas M. Horvath

represented by **David Kane Smith**
(See above for address)
ATTORNEY TO BE NOTICED

Krista K. Keim

(See above for address)
ATTORNEY TO BE NOTICED

Lindsay F. Gingo
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/26/2009	<u>1</u>	Complaint with jury demand against Mentor Public School District, Jacqueline Hoynes, Joseph Spiccia, Thomas M Horvath. Filing fee \$ 350, receipt number 0647000000003485388, filed by William Mohat, Janis Mohat. (Myers, Kenneth) Civil Cover sheet not filed, counsel notified to file same. Modified on 3/26/2009 (C,B). (Entered: 03/26/2009)
03/27/2009		Judge Lesley Wells assigned to case. (C,BA) (Entered: 03/27/2009)
03/27/2009		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Perelman. (C,BA) (Entered: 03/27/2009)
03/27/2009	<u>2</u>	Magistrate Consent Form issued to counsel. No summons provided, no summons issued. (C,BA) (Entered: 03/27/2009)
03/27/2009	<u>3</u>	Order of recusal of case. Case reassigned to Judge Donald C. Nugent for all further proceedings. Judge Lesley Wells no longer assigned to case. Judge Lesley Wells on 3/27/09. (E,P) (Entered: 03/27/2009)
04/27/2009	<u>4</u>	Praecipe for issuance of Original Summons filed by all plaintiffs. Related document(s) <u>1</u> . (Attachments: # <u>1</u> Summons Horvath, # <u>2</u> Spiccia summons, # <u>3</u> Hoynes Summons, # <u>4</u> Mentor summons)(Myers, Kenneth) (Entered: 04/27/2009)
04/28/2009	<u>5</u>	Original Summons issued electronically to counsel for service upon Mentor Public School District Board of Education, Jacqueline Hoynes, Joseph Spiccia, Thomas M. Horvath. (Attachments: # <u>1</u> Summons to Joseph Spiccia, # <u>2</u> Summons to Jacqueline A. Hoynes, # <u>3</u> Summons to Mentor Public School District Board of Education) (B,B) (Entered: 04/28/2009)
05/11/2009	<u>6</u>	Case Management Conference Scheduling Order with case management conference to be held on 6/18/2009 at 10:30 a.m. at Courtroom 15A before Judge Donald C. Nugent. Signed by Judge Donald C. Nugent on 5/11/2009. (B,B) (Entered: 05/11/2009)
05/18/2009	<u>7</u>	<i>Defendants' Answer</i> to <u>1</u> Complaint, filed by Mentor Public School District Board of Education. (Smith, David) (Entered: 05/18/2009)
05/28/2009	<u>8</u>	<i>Errata Correcting Error in the Identification of Defendants After Signature Line in Defendants' Answer to Plaintiffs' Complaint</i> filed by all defendants. Related document(s) <u>7</u> . (Smith, David) (Entered: 05/28/2009)

06/16/2009	<u>9</u>	Report of Parties' Planning Meeting. Parties do not consent to this case being assigned to the magistrate judge, filed by all parties. (Myers, Kenneth) (Entered: 06/16/2009)
06/19/2009	<u>10</u>	Minutes of proceedings before Judge Donald C. Nugent. Case Management Conference held on 6/18/09. Case assigned standard track. Status Conference set for 11/30/2009 at 10:30 AM in Courtroom 15A before Judge Donald C. Nugent., Discovery due by 12/31/2009.) (Court Reporter: None.)Time: 20 minutes. (E,P) Modified text on 6/23/2009 (B,B). (Entered: 06/19/2009)
07/14/2009	<u>11</u>	Motion to amend complaint filed by William Mohat, Janis Mohat. (Myers, Kenneth) (Entered: 07/14/2009)
07/14/2009	<u>12</u>	First Amended complaint with <i>jury demand</i> against all defendants, filed by William Mohat, Janis Mohat. (Myers, Kenneth) (Entered: 07/14/2009)
07/21/2009		Order [non-document]granting Plaintiffs' Motion for Leave to amend complaint (Related Doc # <u>11</u>)Judge Donald C. Nugent(R,JM) (Entered: 07/21/2009)
07/24/2009	<u>13</u>	<i>Defendants' Answer</i> to <u>12</u> Amended complaint filed by Mentor Public School District Board of Education, Jacqueline Hoynes, Joseph Spiccia, Thomas M. Horvath. (Smith, David) (Entered: 07/24/2009)
09/16/2009	<u>14</u>	Motion for judgment on the pleadings filed by Thomas M. Horvath, Jacqueline Hoynes, Mentor Public School District Board of Education, Joseph Spiccia. Related document(s) <u>12</u> , <u>1</u> . (Attachments: # <u>1</u> Appendix Probate Court Documents)(Smith, David) (Entered: 09/16/2009)
10/16/2009	<u>15</u>	Unopposed Motion for extension of time until October 30, 2009 to file response to Motion to Dismiss filed by Janis Mohat, William Mohat. Related document(s) <u>14</u> . (Myers, Kenneth) Modified text on 10/19/2009 (B,IE). (Entered: 10/16/2009)
10/21/2009	<u>16</u>	Marginal Entry Order granting <u>15</u> Motion to Extend Deadlines; Response to Motion to Dismiss is due on or before 10/30/2009. Related Document <u>14</u> . Signed by Judge Donald C. Nugent on 10/21/2009.(B,R) Modified response deadline on 10/26/2009 (B,IE). (Entered: 10/23/2009)
11/01/2009	<u>17</u>	Motion for leave to file response to motion for judgment on the pleadings <i>instanter</i> filed by Janis Mohat, William Mohat. Related document(s) <u>14</u> . (Myers, Kenneth) (Entered: 11/01/2009)
11/01/2009	<u>18</u>	Response to 14 Motion for judgment on the pleadings filed by Janis Mohat, William Mohat. (Myers, Kenneth) (Entered: 11/01/2009)
11/03/2009		Order [non-document]granting Plaintiff's Motion for leave to File Response to Motion For Judgment on the Pleadings (Related Doc # <u>17</u>)Judge Donald C. Nugent(R,JM) (Entered: 11/03/2009)
11/16/2009	<u>19</u>	Motion for extension of Reply Brief until 11/30/2009 filed by Thomas M. Horvath, Jacqueline Hoynes, Mentor Public School District Board of Education, Joseph Spiccia. Related document(s) <u>18</u> . (Smith, David)

		(Entered: 11/16/2009)
11/19/2009		Order [non-document]granting <u>19</u> Defendant's Unopposed Motion for extension of time to file Reply Brief until 11/30/2009. Judge Donald C. Nugent (R,JM) (Entered: 11/19/2009)
11/27/2009	<u>20</u>	Supplement to <u>18</u> Response filed by Janis Mohat, William Mohat. Related document(s) <u>18</u> . (Attachments: # <u>1</u> Exhibit Authority to Administer Estate)(Myers, Kenneth) (Entered: 11/27/2009)
11/30/2009	<u>21</u>	Reply to response to <u>14</u> Motion for judgment on the pleadings filed by Thomas M. Horvath, Jacqueline Hoynes, Mentor Public School District Board of Education, Joseph Spiccia. (Gingo, Lindsay) (Entered: 11/30/2009)
11/30/2009	<u>22</u>	Motion for leave to <i>Exceed Page Limitation</i> filed by Thomas M. Horvath, Jacqueline Hoynes, Mentor Public School District Board of Education, Joseph Spiccia. Related document(s) <u>21</u> . (Gingo, Lindsay) (Entered: 11/30/2009)
12/01/2009	<u>23</u>	Minutes of proceedings before Judge Donald C. Nugent of Status Conference held and all counsel present and participating. Motion for Judgment on the pleadins response filed 11/01/09; reply due 11/30/09. Court to Rule. Next Status Conference set for 1/14/2010 at 10:00 AM in Chambers 15A before Judge Donald C. Nugent. Time: 30 min. (R,JM) (Entered: 12/01/2009)
12/04/2009		Order [non-document]granting Defendants'Motion to file reply to plaintiffs' response to Motion for Judgment on the Pleadings in Excess of Page Limit (Related Doc # <u>22</u>)Judge Donald C. Nugent(R,JM) (Entered: 12/04/2009)
01/29/2010	<u>24</u>	Order Certifying Question of State Law to the Ohio Supreme Court. The remainder of the case is stayed, pending a decision by the Ohio Supreme Court on this certification order. Related document <u>14</u> . Signed by Judge Donald C. Nugent on 1/29/10. (K,K) (Entered: 01/29/2010)

May 25, 2010

Supreme Court of Ohio
Clerk's Office, 8th Floor
65 South Front Street
Columbus, OH 43215

COPY

Re: William Mohat, et al., v. Mentor Exempted Village School, et al.
Our Number: 1:09cv688

Dear Clerk,

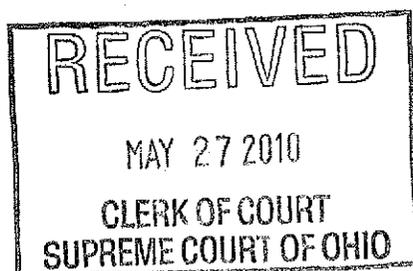
Please find enclosed a certified copy of the docket for the above case and a certified copy of the Order certifying question of state law to the Ohio Supreme Court.

Please acknowledge receipt on the copy of this letter.

Thank you and have a nice day.

Geri M. Smith
Clerk of Court

By: Katherine King
Operations Specialist
(216) 357-7004



United States District Court
Northern District of Ohio

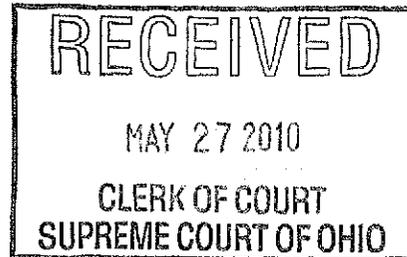
Office of the Clerk
2-161 Carl B. Stokes United States Court House
801 West Superior Avenue
Cleveland, Ohio 44113-1830

(216) 357-7000

Geri M. Smith
Clerk of Court

May 25, 2010

Supreme Court of Ohio
Clerk's Office, 8th Floor
65 South Front Street
Columbus, OH 43215



Re: William Mohat, et al., v. Mentor Exempted Village School, et al.
Our Number: 1:09cv688

Dear Clerk,

Please find enclosed a certified copy of the docket for the above case and a certified copy of the Order certifying question of state law to the Ohio Supreme Court.

Please acknowledge receipt on the copy of this letter.

Thank you and have a nice day.

Geri M. Smith
Clerk of Court

By: Katherine King
Operations Specialist
(216) 357-7004

U.S. Court House
568 Federal Building
2 South Main Street
Akron, OH 44308-1876
(330) 375-5407

114 U.S. Court House
1716 Spielbusch Avenue
Toledo, OH 43624-1347
(419) 259-6412

337 Thomas D. Lambros
Federal Building and U.S. Court House
125 Market Street
Youngstown, OH 44503-1787
(330) 746-1906