

ORIGINAL

IN THE SUPREME COURT OF OHIO

**NORTHEAST OHIO NEIGHBORHOOD)
HEALTH SERVICES, INC., et al.)**

Plaintiffs-Appellees,)

v.)

PRASAD BIKKANI, et. al.)

Defendants-Appellants.)

CASE NO.: 10-0993

**ON APPEAL FROM COURT
OF APPEALS EIGHTH JUDICIAL
DISTRICT CASE NO. C.A. 09-094159**

**(CUYAHOGA COUNTY COURT OF
COMMON PLEAS
CASE NO. CV-07-628928)**

**APPELLANTS' CONSOLIDATED RESPONSE TO MOTIONS OF
APPELLEES TO DISMISS THE APPEAL OF APPELLANTS
PRASAD BIKKANI AND VIJAYA BIKKANI FOR LACK OF JURISDICTION**

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Health Service, Inc. and
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In their motions to dismiss this pending appeal, Appellees (again) move to dismiss the appeal, this time for lack of jurisdiction. Appellees argue that Appellants Notice of Appeal was not timely filed within the 45-day period provided by Supreme Court Rule II Sect. (2)(A). Appellees' motion is misguided and should be denied.

First, Appellees' motion to dismiss is moot as this Court has already rejected these arguments and allowed an extension of time by 45-days from the date of its Entry, April 22 to appeal. The Entry is appended to Appellants' Notice of Appeal filed on June 7 and another copy is appended hereto (**Att. 1**). Appellants' Notice of Appeal and Memorandum in Support of Jurisdiction were filed on June 7, the last day of the extension period allowed by the Court's Entry. Second, Appellees' argument that this extension of time applies only to Mr. Bikkani and not his wife Mrs. Bikkani is refuted by the plain language of the Court's April 22 Entry stating:

It is ordered by the Court, sua sponte, that this order extends the time by 45 days from the date of this entry for Attorney Kevin Breen to file a notice of appeal and memorandum in support of jurisdiction of the January 4, 2010 court of appeals decision.

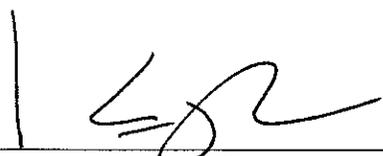
No distinction is made between either of the two Appellants for purposes of the extension of time allowed. Appellees' argument to the contrary is without merit.

(Motion of Plaintiffs-Appellees to Dismiss the Appeal of Appellant Vijaya Bikkani @ 5-7).

Appellees' motion to dismiss this appeal underscores why this Court should accept jurisdiction. The reason that the Court allowed a 45-day extension of time was due to the plain conflict in earlier decisions from this Court as to whether a declared vexatious litigator, now acting through counsel, needed to first obtain leave of court before filing a notice of appeal. As pointed out in the April 22 Entry, this Court had previously ruled

inconsistently on that question. Likewise, the Eighth District Court of Appeals dismissed Appellants notice of appeal *sua sponte* even though Appellants were represented by the undersigned counsel. (See, Appellants Memorandum in Support of Jurisdiction filed June 7, App. 2). ¹ Proposition of Law No. 3 in Appellants' Memorandum in Support of Jurisdiction specifically requests that this Court accept jurisdiction on this issue and make clear that the requirements imposed on a person designated "vexatious" relating to first obtaining leave of Court before filing an appeal does not apply when such person is appealing through counsel and only applies when a declared vexatious litigator is acting *pro se*.

In sum, Appellees motion to dismiss the appeal is moot and, in any case, baseless. Appellees have filed a similar motion to dismiss the other pending **Bikkani** appeal, again, to no avail. **Bikkani v. Rotan E. Lee, et. al.**, case no. 10-0535. Appellants respectfully request that this Court deny Appellees' motion to dismiss the appeal and accept jurisdiction over this case.



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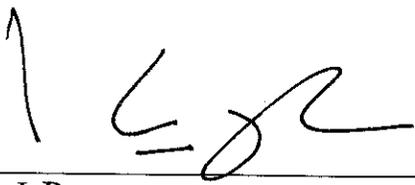
¹ The Eighth District Court of Appeals similarly dismissed *sua sponte* Mr. Bikkani's appeal in another case now on appeal before this Court, **Bikkani, Appellant v. Rotan E. Lee, et. al., Appellees** case no. 10-0535. (See, Appellants Memorandum in Support of Jurisdiction filed March 25, 2010, App. 1.) Again, Mr. Bikkani's appeal was filed by his counsel.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appellants' Consolidated Response to Motion of Appellees to Dismiss the Appeal of Appellants Prasad Bikkani and Vijaya Bikkani for Lack of Jurisdiction was sent via U.S. Regular Mail this 17 day of June, 2010 to:

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Kevin J. Breen

The Supreme Court of Ohio

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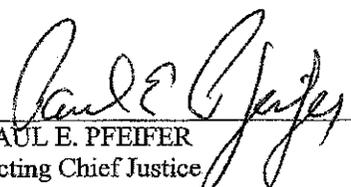
CLERK OF COURT
SUPREME COURT OF OHIO

In re application of Breen

ENTRY

On March 8, 2010, the Court issued an order indicating that Kevin Breen, as a licensed attorney, was not required to seek leave to file an appeal on behalf of Prasad Bikkani. On March 19, 2010, Breen presented a motion for extension of time to file an appeal and indicated that the decision of March 8, 2010, was in conflict with the Court's decision in Case No. 2008-1667, which struck his documents for failure to seek leave. A memorandum in opposition to the motion for extension of time was also filed.

It is ordered by the Court, sua sponte, that this order extends the time by 45 days from the date of this entry for attorney Kevin Breen to file a notice of appeal and memorandum in support of jurisdiction of the January 4, 2010 court of appeals decision.



PAUL E. PFEIFER
Acting Chief Justice

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