ORIGINAL

IN THE SUPREME COURT OF OHIO

RENE MAYS, Individually and as Fiduciary of the Estate of Galon Howard, Deceased, et al.	)	Supreme Court Case Nos. 2011-1457 2011-1485
	)	
	)	On Appeal from the Lucas County Court of Appeals, Sixth District
v.	)	Court of Appeals Case No. L-11-1145
Toledo Hospital, et al.	)	

THE TOLEDO HOSPITAL'S MOTION PURSUANT TO S.CT. PRAC. R. 14.5(A)

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Pro-se

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FILED
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SUPREME COURT OF OHIO

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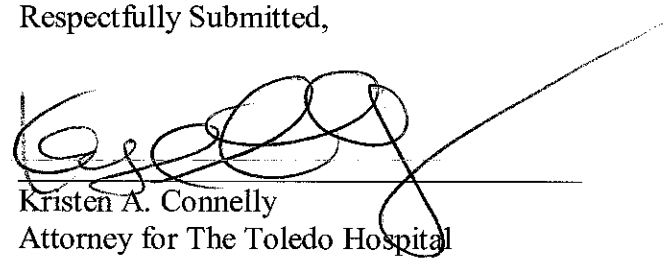
The Toledo Hospital moves this Court, pursuant to S.Ct.Prac.R. 14.5(A), for appropriate sanctions against Renee Mays for her frivolous, harassing appeals to this Court. Ms. Mays was found by the Lucas County Court of Common Pleas to be without authority to prosecute any of the claims at issue in this matter as a non-attorney. (See, July 27, 2011 Judgment Entry of the Lucas County Court of Common Pleas.) As such, there should be no appeal before this Court in this case. Despite her status as a non-attorney, and after the trial court's dismissal on that basis, Ms. Mays has persisted in filing numerous pleadings with the trial court, instituting and prosecuting appeals to the Sixth District Court of Appeals and now to this Court.

In addition to her inability to maintain this action as counsel, Ms. Mays' appeals are frivolous and harassing as there has been no final appealable order issued by any court from which an appeal to this Court is appropriate. Further, as Ms. Mays was informed by this Court, it does not have jurisdiction over direct appeals from a trial court in this type of case.

For the reasons that Ms. Mays is without authority as a pro-se litigant to institute or maintain wrongful death and survivorship claims in this case, that there is no final appealable order in this case, and direct appeals to this Court from the trial court are not permitted, The Toledo Hospital moves this Court for all appropriate sanctions, including, but not limited to, dismissal of the appeals and attorneys' fees. Arguments in support of The Toledo Hospital's ("TTH") Motion are set forth below in the accompanying Memorandum in Support.

Respectfully Submitted,



Kristen A. Connelly
Attorney for The Toledo Hospital

Memorandum in Support

A. Pertinent Procedural History

1. Lucas County Court of Common Pleas and Sixth District Court of Appeals

This case was filed by Ms. Mays, on behalf of "Plaintiffs" on or about April 19, 2011 in the Lucas County Court of Common Pleas, alleging medical negligence and wrongful death relating to care rendered at The Toledo Hospital and Mercy St. Anne's Hospital to Galon Howard. Plaintiff, Rene Mays (adult sister of Galon Howard now deceased) brought the claims *pro se* for the benefit of herself, Mr. Howard's Estate, Mr. Howard's parents, Mr. Howard's siblings and Mr. Howard's adult children, pursuant to R.C. §§ 2305.113 (medical claim) and 2125.02 (wrongful death). (See, Complaint ¶¶ 32, 33.) The Complaint was filed without the support of an Affidavit of Merit, but an initial extension of time was sought and granted. (See, April 26, 2011 Order of trial court.) On May 26, 2011, TTH moved to dismiss the Complaint on the basis that Ms. Mays could not maintain the claims as a non-attorney. Ms. Mays opposed the motion. On July 27, 2011, the trial court granted the Motion to Dismiss without prejudice because of her non-attorney status (the numerous other pleadings filed by Ms. Mays with the trial court were then moot).

Prior to the trial court's dismissal of the Complaint, Ms. Mays filed a Notice of Appeal and Merit Brief with the Sixth District Court of Appeals on June 16, 2011 of the trial court's order which denied her a second extension of time to produce an Affidavit of Merit in support of the Complaint. On July 20, 2011, the Court of Appeals dismissed the appeal *sua sponte*, finding that there was no final appealable order in the case (several other pleadings were then ruled moot and denied by the Court of Appeals).

On July 21, 2011, Ms. Mays filed a Motion for Reconsideration with the Court of Appeals regarding its dismissal of her appeal the day before. One week later, on July 28, 2011, Ms. Mays filed an Amended Motion for Reconsideration of the dismissal (the day after the trial court's dismissal of her Complaint on the basis that she could not maintain the claims as a pro se litigant).

On July 29, 2011, Ms. Mays filed a pleading entitled "Ohio Civil Rule 62(A) Motion for Stay of the [Appellate] Court's July 20, 2011 Judgment Pending Amended Notice of Appeal and Motion to Vacate Filed in the Trial Court on July 28, 2011". On August 18, 2011, the Sixth District Court of Appeals issued a Decision and Judgment dismissing both the Motion for Reconsideration and Amended Motion for Reconsideration. But, the Court held that it would treat Ms. Mays' July 29, 2011 pleading as a timely Motion for Reconsideration.

On August 18, 2011, the Court denied the Motion for Reconsideration on the basis that Ms. Mays had failed to demonstrate an obvious error in its previous decision or raise an issue for consideration that was "either not considered at all or was not fully considered by the court when it should have been." (See, Decision and Judgment of August 18, 2011.) The court noted that at the time of the *sua sponte* dismissal, the trial court action was still pending.

2. <u>Appeals to this Court</u>

Ms. Mays initially tried to file an appeal of solely the trial court's orders with this Court, but it was rejected. (See August 23, 2011 correspondence from Ohio Supreme Court to Ms. Mays, attached as Exhibit A.) After being notified by this Court of its refusal to accept the appeal because it originated from an order of a trial court, she filed a Notice of Appeal on August 24, 2011 (Case No. 11-1457) and a second Notice of Appeal on August 30, 2011 (Case No. 11-1485). Ms. Mays' first Notice of Appeal is an appeal from the Court of Appeals'

August 18, 2011 decision denying the Motion for Reconsideration of its prior dismissal of her appeal.

The August 30, 2011 Notice seeks an appeal of three orders: the Court of Appeals' dismissal of the appeal of July 20, 2011 for lack of a final appealable order, the trial court's dismissal of the Complaint on August 11, 2011 because Ms. Mays is not a lawyer, and the trial court's August 27, 2011 denial of her Motion for Reconsideration of its previous dismissal of the complaint.

Ms. Mays' successive appeals in this case illustrate her deliberate ignorance of the underlying issues in this case: she is not an attorney and has no ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents; there is no final appealable order from which she can even appeal; and, as clearly set out in correspondence of August 23, 2011, this Court does not have jurisdiction over a direct appeal from a trial court in this case. (See, Exhibit A.) For these reasons, Ms. Mays' appeals are frivolous and harassing. As such, pursuant to S.Ct.Prac.R. 14.5(A), the sanctions of dismissal and attorneys' fees, at a minimum, should be imposed.

B. Law and Argument

1. Standard of Law- S.Ct. Prac. R. 14.5(A)

S.Ct. Prac. R. 14.5(A) provides that if this Court determines, *sua sponte* or on motion by a party

> that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose, on the person who signed the appeal or action, * * * appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs, or double costs, or any other sanction the Supreme Court considers just.

S.Ct.Prac. R. 14.5(A). In this matter, TTH maintains that Ms. Mays' appeals are frivolous and harassing given her inability to prosecute the claims *pro se*, the lack of a final appealable order and the lack of jurisdiction of this Court over a direct appeal from the trial court. "An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." Id.

2. Ms. Mays is not an attorney and has no ability to maintain the claims against TTH.

As found by the trial court, in its July 27, 2011 Opinion and Judgment Entry, Ms. Mays, as a non-attorney, has no authority to represent the statutory next of kin in their claim for wrongful death nor the estate in the survivorship action, the beneficiaries of which include persons other than Ms. Mays. "In both counts, Ms. Mays is acting for the benefit of persons other than herself, and therefore she is prohibited from bringing either action *pro se*." (See, Opinion and Judgment Entry of Lucas County Court of Common Pleas, p. 3.)

Ohio Revised Code § 4705.01 states "no person shall be permitted to practice as an attorney...or to commence, conduct, or defend any action or proceeding...unless the person has been admitted to the Bar by order of the Supreme Court." The exception to this Rule is a person who represents him or herself **only**. R.C. 4705.01. Ms. Mays has never presented evidence that she is in fact an attorney. Instead, she ignores the statutory prohibition and the trial court ruling which demonstrates that she is prevented from representing others and has persisted in filing excessive pleadings in the courts of common pleas, appeal and now Supreme Court.

For the reason that clearly established statutory and case law prohibit Ms. Mays from maintaining the claims of wrongful death or survivorship, and the trial court's clear opinion

regarding same, her continued maintenance of them is frivolous and constitutes harassment. As such, sanctions, including dismissal and attorneys fees, should be imposed by this Court, pursuant to S.Ct.Prac.R. 14.5(A).

3. <u>There are no final appealable orders from which an appeal is proper.</u>

Ms. Mays appeals four orders in her two Notices of Appeal: the trial court's dismissal of her Complaint and Motion to Reconsider that dismissal and the Court of Appeals' dismissal of her appeal of the trial court's order denying her a second extension of time to file an Affidavit of Merit and Motion to Reconsider that dismissal. Not one of these is a final appealable order appropriately brought before this Court; none of the orders fit into any of the categories of R.C. 2505.02, which defines final, appealable orders.

R.C. 2505.03(A) provides that "[e]very final order, judgment, or decree of a court * * * may be reviewed on appeal by a court of common pleas, a court of appeals, or the supreme court, whichever has jurisdiction." Ohio law provides in pertinent part:

> An order is a final order that may be reviewed, affirmed, modified, or reversed, with or without retrial, when it is one of the following:
>
> (1) An order that affects a substantial right in an action that in effect determines the action and prevents a judgment;
>
> (2) An order that affects a substantial right made in a special proceeding or upon a summary application in an action after judgment;
>
> (3) An order that vacates or sets aside a judgment or grants a new trial;
>
> (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.

> (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.
>
> (5) An order that determines that an action may or may not be maintained as a class action;
>
> (6) An order determining the constitutionality of any changes to the Revised Code made by Am. Sub. S.B. 281 of the 124th general assembly, including the amendment of sections 1751.67, 2117.06, 2305.11, 2305.15, 2305.234, 2317.02, 2317.54, 2323.56, 2711.21, 2711.22, 2711.23, 2711.24, 2743.02, 2743.43, 2919.16, 3923.63, 3923.64, 4705.15, and 5111.018, and the enactment of sections 2305.113, 2323.41, 2323.43, and 2323.55 of the Revised Code or any changes made by Sub. S.B. 80 of the 125th general assembly, including the amendment of sections 2125.02, 2305.10, 2305.131, 2315.18, 2315.19, and 2315.21 of the Revised Code;
>
> (7) An order in an appropriation proceeding that may be appealed pursuant to division (B)(3) of section 163.09 of the Revised Code.

R.C. 2505.02(B).

None of the orders from which Ms. Mays appeals falls within one of the categories above. The dismissal of the Complaint, on the basis that Ms. Mays is not an attorney, was without prejudice and could be refiled. The Court of Appeals' dismissal of her appeal of the trial court's denial for a second extension of time to file an Affidavit of Merit is also without prejudice. Significantly, even if the trial court dismissed her claims due to a failure to timely file an Affidavit of Merit, it would be without prejudice, pursuant to Ohio Civil Rule 41, and likewise not final and appealable.

Ms. Mays' continued appeals from orders which are not final and appealable constitutes frivolous and harassing conduct. As such, the sanctions of dismissal and attorneys' fees should be imposed.

4. Direct appeals from the common pleas court are not permitted in this case.

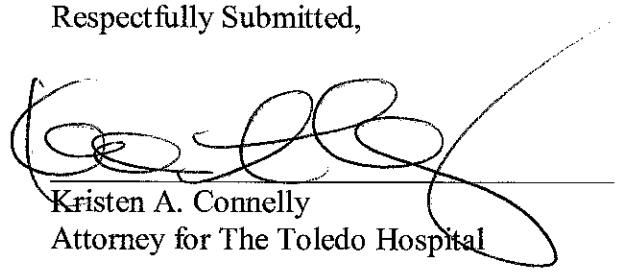
Even after Ms. Mays was notified that direct appeals from the trial court were not permitted in her case, pursuant to Rule 2.1(C), she filed a Notice of Appeal on August 30, 2011

arising from two decisions from the Lucas County Court of Common Pleas. As her appeal does not concern the imposition of the death penalty or an election result contest, this Court is without jurisdiction to entertain the appeal. Ms. Mays was made aware of this limitation on the jurisdiction of this Court but still filed her Notice. This appeal is clearly frivolous and harassing.

C. Conclusion

The filing of excessive pleadings does not make Ms. Mays an attorney; stacking orders that are not final and appealable does not convert them into final orders; and multiple appeals does not vest this Court with jurisdiction over a direct appeal from a trial court. Ms. Mays has elected to file numerous appeals instead of merely doing what is required by law to institute the claims. As a result of Ms. Mays' frivolous, harassing conduct, TTH has been required to defend itself in three different courts of this State. As such, TTH respectfully requests that this Court sanction Ms. Mays for her frivolous conduct by, at a minimum, dismissing her claims and ordering her to pay its attorneys' fees.

Respectfully Submitted,



Kristen A. Connelly
Attorney for The Toledo Hospital

CERTIFICATION

This is to certify that a true and correct copy of the foregoing was placed in the United States mail this 8th day of September, 2011, postage prepaid and addressed to the following:

Rene Mays
328 E. Central Avenue
Toledo, Ohio 43608

Peter N. Lavalette
Robison, Curphey & O'Connell
Ninth Floor, Four SeaGate
Toledo, Ohio 43604

Kristen A. Connelly

The Supreme Court of Ohio

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CLERK OF THE COURT
KRISTINA D. FROST

TELEPHONE 614.387.9530
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August 23, 2011

Rene Mays
328 E. Central Avenue
Toledo, Ohio 43608

Dear Ms. Mays:

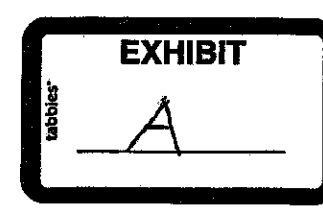
The enclosed notice of appeal and memorandum in support of jurisdiction were not filed because they do not comply with the Rules of Practice of the Supreme Court of Ohio. Your notice of appeal states you are appealing the judgment of the Lucas County Court of Common Pleas. The court of common pleas judgment you are attempting to appeal, however, is not a judgment from which a direct appeal to the Supreme Court of Ohio may be filed.

As provided by Rule 2.1(C), direct appeals from courts of common pleas to the Supreme Court are permissible only in two circumstances: (1) an appeal of a case in which the death penalty has been imposed for an offense committed on or after January 1, 1995; and (2) an appeal of a case contesting an election under section 3515.15 of the Revised Code. The court of common pleas judgment entry attached to your documents was not issued in one of these case types. Therefore, your documents were not filed and are being returned along with the $100.00 money order tendered for the filing fee.

I you wish to appeal the July 20, 2011 court of appeals decision included in your materials, your may amend your documents accordingly and resubmit them for filing. To timely appeal a July 20, 2011 court of appeals decision, your amended notice of appeal and memorandum in support of jurisdiction are due in the Clerk's Office no later than September 6, 2011.

For additional information, please refer to the enclosed copy of the Rules of Practice and our Pro Se Guide to Filing an Appeal in the Supreme Court.

Sincerely,

Nathan
Deputy Clerk

Enclosures