

ORIGINAL

REQUESTED CONSOLIDATED RECORD NOS. 2011-1457 AND 2011-1485

IN THE OHIO SUPREME COURT

RENE MAYS, Individually and as
Fiduciary of the Estate of Galon Howard,
Deceased, et al.,

Plaintiff-Appellant,

-vs-

TOLEDO HOSPITAL, et al.,

and

Mercy St. Anne's Hospital, et al.

Defendants-Appellees.

Case No. CI0201102848
Court of Appeals No. 11-1145

REPLY MERIT BRIEF OF APPELLANT RENE MAYS

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STATUTES AND RULES

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APPELLANT'S ARGUMENT IN REPLY

A. PERTINENT PROCEDURAL HISTORY

1. LUCAS COUNTY COURT OF COMMON PLEAS AND SIXTH DISTRICT COURT OF APPEALS

The Plaintiffs' original Complaint in this case was filed on April 19, 2011. (See September 10, 2011, Docket of the Lucas County Court of Common Pleas, attached as Exhibit 1.) 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 the trial court.) The docket indicates certified mail service was made on Mercy St. Anne Hospital on April 25, 2011 although the certified mail card was signed by a D. Saville on that date. The docket also indicates certified mail service was made on Toledo Hospital on no date given although the certified mail card was illegibly signed on that date. Therefore, pursuant to the Civil Rules, Mercy St. Anne Hospital and Toledo Hospital's Answers to the original Complaint was due to be served by May 23, 2011. No Answers were filed on May 23, 2011. (See September 10, 2011, Docket of the Lucas County Court of Common Pleas, attached as Exhibit 1.)

Pursuant to the Civil Rules, including Civil Rule 56(A), Plaintiff filed a motion for summary judgment, first seeking summary judgment on the issue of liability, and also asking the Court to determine that she is entitled to judgment as a matter of law. This Motion was supported by an Affidavit in Support filed contemporaneously therewith the motion. (See September 10, 2011, Docket of the Lucas County Court of Common Pleas, attached as Exhibit 1.) For the reasons set forth therein, the trial court should have granted the Plaintiff's Motion for Summary Judgment as against Mercy St. Anne Hospital and Toledo Hospital, finding that no genuine issues of material fact remained to

be litigated and that the Plaintiff is entitled to judgment as a matter of law.

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 that motion on the basis that she could maintain the claims for herself only pro-se. On June 1, 2011, Mercy St. Anne Hospital moved to dismiss the Complaint on the basis that Ms. Mays could not maintain the claims as a non-attorney. Ms. Mays opposed that motion on the basis that she could maintain the claims for herself only pro-se.

Ms. Mays filed an Amended Complaint on June 8, 2011, on the basis that she could maintain the claims for herself only pro-se and served Mercy St. Anne Hospital and Toledo Hospital, by regular mail service. Therefore, pursuant to the Civil Rules, Mercy St. Anne Hospital and Toledo Hospital's Answers to the Amended Complaint was due to be served by June 22, 2011. Again, no Answers were filed on June 22, 2011. (See September 10, 2011, Docket of the Lucas County Court of Common Pleas, attached as Exhibit 1.)

On July 27, 2011, the trial court granted the Motions to Dismiss without prejudice because of her non-attorney status and overlooked the facts that she could maintain the claims for herself only pro-se (the numerous other pleadings filed by Ms. Mays with the trial court maintaining that she could maintain the claims for herself only pro-se were then moot).

Prior to the trial court's dismissal of the Amended 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 second extension of time to produce an Affidavit of Merit in support of the Complaint. (See September 10, 2011, Docket of the

Lucas County Court of Appeals, attached as Exhibit 2.) 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 Amended Complaint because of her non-attorney status and deliberately overlooking the facts that she could maintain the claims for herself only pro-se.)

On July 29, 2011, Ms. Mays filed a pleading entitled "Ohio Civil Rule 62(A) Motion 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.

On September 8, 2011, Ms. Mays filed a pleading entitled "Appellant's Motion for Leave to File the Attached Proposed Amended Notice of Appeal of Appellant Rene Mays; Alternative, App. R. 14(C); App. R. 26(A) Motion to Reconsider the Court's decision and judgment, journalized on August 18, 2011, in which it denied her motion to reconsider its decision and judgment, journalized on July 20, 2011, in which it dismissed her appeal for lack of a final appealable order," on the basis that the trial court deliberately overlooked the facts that she could maintain the claims for herself only pro-se and on the basis that she had demonstrated an obvious error in its previous decisions or raised an issue for consideration that was "either not considered at all or was not fully considered by the court when it should have been." Final disposition on that pleading is still pending in the Court of Appeals.

2. APPEALS TO THIS COURT

Ms. Mays initially tried to file an appeal of solely the trial court's orders with this court, but it was rejected. (See Exhibit A attached to the Appellee's TTH Motion pursuant to S. Ct. Prac. R. 14.5(A)). After being notified by this Court of its refusal to accept the appeal because it originated from an order of a trial court and provided with a copy of the Rules of Practice and this Court's Pro-se Guide to filing an Appeal in the Supreme Court, she filed a Notice of Appeal on August 30, 2011 (Case No. 11-1485). Prior to that Appellant filed a Notice of Appeal on August 24, 2011 (Case No. 11-1457). 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 stayed appeal.

The August 30, 2011 Notice seeks an appeal of three orders: the Court of

Appeals' automatically stayed dismissal of the appeal of July 20, 2011 for lack of a final appealable order, the trial court's dismissal of the Amended Complaint on August 11, 2011 because of her non-attorney status and it deliberately overlooking the facts that she could maintain the claims for herself only pro-se, and the trial court's August 27, 2011 denial of her Motion for Reconsideration of its previous dismissal of the Amended Complaint.

Ms. Mays' successive appeals in this case illustrate that the underlying issues in this case that she is not an attorney but she has the ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se, there is a final appealable order from which she can appeal; and, as clearly set out in her Memorandum in Support, this Court has jurisdiction over appeals originating from a Court of Appeals in this case. (See September 10, 2011, Dockets of the Ohio State Supreme Court, attached as Exhibits 3-4.) For these reasons, Ms. Mays appeals are reasonably well-grounded in fact and are warranted by existing law or has a good faith argument for the extension, modification, or reversal of existing law. As such, sanctions pursuant to S. Ct. Prac. R. 14.5(A) is simply inapplicable as to Ms. Mays but, such sanctions pursuant to Ohio Revised Code, 2323.51 are applicable and appropriate as to the appellees and their legal counsel.

B. LAW AND ARGUMENT

1. STANDARD OF LAW-OHIO REVISED CODE 2323.51-THIS COURT MAY SANCTION COUNSELS OF RECORD FOR APPELLEES FOR THEIR REPEATED MISTATEMENTS OF LAW AND FACT

In their recently filed pleading, counsel for Appellee essentially argues that this Court has no jurisdiction over appeals originating from a Court of Appeals in this case,

another misstatement of law and fact. More specifically, she argues that this Court should sanction Ms. Mays for frivolous conduct under S. Ct. Prac. R. 14.5(A) and that Rule is applicable for this proceeding wherein Ms. Mays has the ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se.

Ohio Revised Code §2323.51(A) provides that if this Court determines, *sua sponte* or motion by a party:

(2) "Frivolous conduct" means either of the following:

(a) Conduct ...or other party's counsel of record that satisfies any of the following:

(i) It serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contention that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denial or factual contention that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

(B)(1) *** The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

(B)(4) An award made pursuant to division (B)(1) of this section may be made against a party, the party's counsel of record, or both.

The statements in the pleadings that were made by the parties and its counsel that Ms. Mays could not maintain the claims as a non-attorney is not well-grounded in fact

nor warranted by existing law.

In this matter, Ms. Mays maintains that her successive appeals in this case illustrate that the underlying issues in this case that she is not an attorney but she has the ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se, there is a final appealable order from which she can appeal; and, as clearly set out in her Memorandum in Support, this Court has jurisdiction over appeals originating from a Court of Appeals in this case. (See September 10, 2011, Dockets of the Ohio State Supreme Court, attached as Exhibits 3-4.)

For these reasons, Ms. Mays' appeals is reasonably well-grounded in fact and are warranted by existing law or has a good faith argument for the extension, modification, or reversal of existing law. As such, sanctions pursuant to S. Ct. Prac. R. 14.5(A) is simply inapplicable to Ms. Mays but, such sanctions of including the striking the appellees sham Motion filed under S. Ct. Prac. R. 14.5(A), in violation of Civil Rule 11, reasonable expenses incurred in connection with these appeals pursuant to Ohio Revised Code, 2323.51, at a minimum, should be imposed against both Mercy St. Anne Hospital and Toledo Hospital and their legal counsel pursuant to the provisions contained in Ohio Revised Code, 2323.51(B)(4) for their frivolous conduct in this case.

2. Ms. Mays is NOT AN ATTORNEY BUT SHE has the ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se.

As found by the trial court, in its July 27, 2011 Opinion and Judgment Entry, that "claims of any plaintiff, other than Rene Mays' personal claims must be dismissed based upon R.C. 4705.01." (See, Opinion and Judgment Entry of Lucas County Court of

Common Pleas, p. 2.)

R.C. 4705.01 provides that: "No person shall be permitted to practice as an attorney and counselor at law, or to commence, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme-court in compliance with its prescribed and published rules." The law recognizes that a person has the inherent right to proceed pro se in any court, but that right pertains only to that person. R.C. 4705.01; Exhibit 5 at ¶14. Ms. Mays has presented substantial evidence of her personal claims (see her Affidavit in Support of Summary Judgment at ¶9 filed with the trial court on May 23, 2011; see also, Affidavit of Rene Mays at ¶2 filed with the trial court on May 26, 2011) to the trial court, the statutory provisions and the trial court ruling demonstrate that she can maintain the personal claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se.

For the reason that clearly established statutory and case law allows Ms. Mays to maintain the claims of wrongful death and survivorship, and the trial court's clear opinion regarding same, her continued maintenance of them are warranted and constitutes a good faith argument for the extension, modification, or reversal of existing law. As such, this Court must deny the Appellees motion for sanctions, and allow Ms. Mays' her reasonable expenses incurred in connection with these appeals pursuant to Ohio Revised Code, 2323.51, at a minimum, this Court should impose appropriate sanctions against both Mercy St. Anne Hospital and Toledo Hospital and their legal counsel pursuant to the provisions contained in Ohio Revised Code, 2323.51(B)(4) for their frivolous conduct in this case.

3. There is a final appealable order from which these appeals are taken

Ms. Mays appeals four orders in her two Notices of Appeal: The trial court's dismissal of her Amended Complaint and Motion to Reconsider that dismissal and the Court of Appeals' dismissal of her appeal of the trial court's order denying her second extension of time to file an Affidavit of Merit and Motion to Reconsider that dismissal.

All of these are final appealable orders properly brought before this Court, because each of these appealed orders originated from the Sixth District Court of Appeals, pursuant to S. Ct. Prac. R. 2.1(A), which provides appeals from the courts of appeals to the Supreme Court are permissible in at least two circumstances: (1) Appeals of right of case that originated in the court of appeals invoking the appellate jurisdiction of the Supreme Court; (2) Claimed appeals of right that originated in the court of appeals invoking the appellate jurisdiction of the Supreme Court; (3) Discretionary appeals. The Court of Appeals judgment entry attached to Ms. Mays' Notices of Appeal was issued in one of these case types. Therefore, the Court accepted Ms. Mays' Notices of Appeal and memorandum in support of jurisdiction together with her affidavit of indigency for filing in this Court.

Ohio law 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." R.C. 2505.03(A). In this case all of the orders from which Ms. Mays appeals falls within one of the categories listed in S. Ct. Prac. R. 2.1(A). The dismissal of the Amended Complaint without prejudice, as to any plaintiff other than Ms. Mays personal claims on the basis that because of her non-

attorney status and wherein the trial court overlooked the facts that she could maintain the claims for herself only pro-se (the numerous other pleadings filed by Ms. Mays with the trial court maintaining that she could maintain the claims for herself only pro-se were then moot) was clearly improper and an abuse of discretion. 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 was also unwarranted because the stayed dismissal order and the trial court's dismissal order transformed the court of appeals interlocutory judgment into a final appealable order. Significantly, the trial court abused its discretion in denying Ms. Mays a second extension of time in which to file an Affidavit of Merit to support her claims of medical negligence and wrongful death; also the trial court erred by not applying the doctrine of common knowledge as to negate the need for an affidavit of Merit, these assignments of errors arose from a final appealable order pursuant to R.C. 2505.02(B) as one the circumstances existed on appeal to the Sixth District Court of Appeals.

For the reason that clearly established statutory and case law allows Ms. Mays to maintain the claims of wrongful death and survivorship, and the trial court's clear opinion regarding same, her continued maintenance of them are warranted and constitutes a good faith argument for the extension, modification, or reversal of existing law. As such, this Court must deny the Appellees motion for sanctions, and allow Ms. Mays' her reasonable expenses incurred in connection with these appeals pursuant to Ohio Revised Code, 2323.51, at a minimum, this Court should impose appropriate sanctions against both Mercy St. Anne Hospital and Toledo Hospital and their legal counsel pursuant to the provisions contained in Ohio Revised Code, 2323.51(B)(4) for their frivolous conduct in

this case.

4. Appellees Mercy St. Anne Hospital and Toledo Hospital did not timely answer appellant's Complaint or Amended Complaint

As noted above, the Appellant's Amended Complaint was filed on June 8, 2011, on the basis that she could maintain the claims for herself only pro-se and were served Mercy St. Anne Hospital and Toledo Hospital, by regular mail service. Pursuant to Civil Rule 15(A), a party is to answer an amended pleading within the time period for responding to the original pleading, or within fourteen days of service of the amended pleading, *whichever is longer*.

In this case, the original due date for Mercy St. Anne Hospital and Toledo Hospital's answer was May 23, 2011, and this coincides with the answer date an amended complaint served via regular mail service. See, Civil Rules 15(A) and 6(E). Neither Mercy St. Anne Hospital nor Toledo Hospital filed an answer to the original complaint or an answer to the amended complaint within the proscribed time frame, in fact no answers were ever filed therefore there is a basis for striking their motions to dismiss in order to grant judgment to Ms. Mays. For that reason, this Court should deny Appellees' S. Ct. Prac. R. 14.5(A), motion.

For the reason that clearly established statutory and case law allows Ms. Mays to maintain the claims of wrongful death and survivorship, and the trial court's clear opinion regarding same, her continued maintenance of them are warranted and constitutes a good faith argument for the extension, modification, or reversal of existing law. As such, this Court must deny the Appellees motion for sanctions, and allow Ms. Mays' her reasonable expenses incurred in connection with these appeals pursuant to Ohio Revised Code, 2323.51, at a minimum, this Court should impose appropriate sanctions against

both Mercy St. Anne Hospital and Toledo Hospital and their legal counsel pursuant to the provisions contained in Ohio Revised Code, 2323.51(B)(4) for their frivolous conduct in this case.

C. CONCLUSION

The successive appeals in this case illustrate that the underlying issues in this case that she is not an attorney but she has the ability to maintain the claims presented in this case in any of the three courts in which she has filed pleadings and documents for herself only pro-se, there is a final appealable order from which she can appeal; and, as clearly set out in her Memorandum in Support, this Court has jurisdiction over appeals originating from a Court of Appeals in this case. As a result of Mercy St. Anne Hospital and Toledo Hospital and their legal counsel frivolous conduct, Ms. Mays has been required to pursue or otherwise defend herself in three different courts of this State. As such, Ms. Mays respectfully requests that this Court deny the Appellees motion for sanctions, and allow Ms. Mays' her reasonable expenses incurred in connection with these appeals pursuant to Ohio Revised Code, 2323.51, at a minimum, this Court should impose appropriate sanctions against both Mercy St. Anne Hospital and Toledo Hospital and their legal counsel pursuant to the provisions contained in Ohio Revised Code, 2323.51(B)(4) for their frivolous conduct in this case as well as all other relief this Court shall deem proper and just in the premises.

Respectfully submitted,
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Plaintiff-Appellant-pro-se

PROOF OF SERVICE

This is to certify that a copy of the foregoing of Rene Mays was sent via ordinary U.S. Mail or via facsimile this 12th day of September, 2011 to:

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Dated: 09/12/2011

Rene Mays Pro Se
Plaintiff-Appellant-pro-se

2323.51 Frivolous conduct in filing civil claims.

(A) As used in this section:

(1) "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

(b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.

(2) "Frivolous conduct" means either of the following:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

(b) An inmate's commencement of a civil action or appeal against a government entity or employee when any of the following applies:

(i) The claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law.

(ii) It is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal.

(iii) The claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law that are the basis of the current appeal involve

the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

(3) "Civil action or appeal against a government entity or employee," "inmate," "political subdivision," and "employee" have the same meanings as in section 2969.21 of the Revised Code.

(4) "Reasonable attorney's fees" or "attorney's fees," when used in relation to a civil action or appeal against a government entity or employee, includes both of the following, as applicable:

(a) The approximate amount of the compensation, and the fringe benefits, if any, of the attorney general, an assistant attorney general, or special counsel appointed by the attorney general that has been or will be paid by the state in connection with the legal services that were rendered by the attorney general, assistant attorney general, or special counsel in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(b) The approximate amount of the compensation, and the fringe benefits, if any, of a prosecuting attorney or other chief legal officer of a political subdivision, or an assistant to a chief legal officer of those natures, who has been or will be paid by a political subdivision in connection with the legal services that were rendered by the chief legal officer or assistant in the civil action or appeal against the government entity or employee, including, but not limited to, a civil action or appeal commenced pro se by an inmate, and that were necessitated by frivolous conduct of an inmate represented by counsel of record, the counsel of record of an inmate, or a pro se inmate.

(5) "State" has the same meaning as in section 2743.01 of the Revised Code.

(6) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code.

(B)(1) Subject to divisions (B)(2) and (3), (C), and (D) of this section and except as otherwise provided in division (E)(2)(b) of section 101.15 or division (I)(2)(b) of section 121.22 of the Revised Code, at any time not more than thirty days after the entry of final judgment in a civil action or appeal, any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who was adversely affected by frivolous conduct, as provided in division (B)(4) of this section.

(2) An award may be made pursuant to division (B)(1) of this section upon the motion of a party to a civil action or an appeal of the type described in that division or on the court's own initiative, but only after the court does all of the following:

(a) Sets a date for a hearing to be conducted in accordance with division (B)(2)(c) of this section, to determine whether particular conduct was frivolous, to determine, if the conduct was frivolous, whether any party was adversely affected by it, and to determine, if an award is to be made, the amount of that award;

(b) Gives notice of the date of the hearing described in division (B)(2)(a) of this section to each party or counsel of record who allegedly engaged in frivolous conduct and to each party who allegedly was adversely affected by frivolous conduct;

(c) Conducts the hearing described in division (B)(2)(a) of this section in accordance with this division, allows the parties and counsel of record involved to present any relevant evidence at the hearing, including evidence of the type described in division (B)(5) of this section, determines that the conduct involved was frivolous and that a party was adversely affected by it, and then determines the amount of the award to be made. If any party or counsel of record who allegedly engaged in or allegedly was adversely affected by frivolous conduct is confined in a state correctional institution or in a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, the court, if practicable, may hold the hearing by telephone or, in the alternative, at the institution, jail, or workhouse in which the party or counsel is confined.

(3) The amount of an award made pursuant to division (B)(1) of this section that represents reasonable attorney's fees shall not exceed, and may be equal to or less than, whichever of the following is applicable:

(a) If the party is being represented on a contingent fee basis, an amount that corresponds to reasonable fees that would have been charged for legal services had the party been represented on an hourly fee basis or another basis other than a contingent fee basis;

(b) In all situations other than that described in division (B)(3)(a) of this section, the attorney's fees that were reasonably incurred by a party.

(4) An award made pursuant to division (B)(1) of this section may be made against a party, the party's counsel of record, or both.

(5)(a) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded reasonable attorney's fees and the party's counsel of record may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the reasonable attorney's fees, an itemized list or other evidence of the legal services rendered, the time expended in rendering the services, and whichever of the following is applicable:

(i) If the party is being represented by that counsel on a contingent fee basis, the reasonable attorney's fees that would have been associated with those services had the party been represented by that counsel on an hourly fee basis or another basis other than a contingent fee basis;

(ii) In all situations other than those described in division (B)(5)(a)(i) of this section, the attorney's fees associated with those services.

(b) In connection with the hearing described in division (B)(2)(a) of this section, each party who may be awarded court costs and other reasonable expenses incurred in connection with the civil action or appeal may submit to the court or be ordered by the court to submit to it, for consideration in determining the amount of the costs and expenses, an itemized list or other evidence of the costs and expenses that were incurred in connection with that action or appeal and that were necessitated by the frivolous conduct, including, but not limited to, expert witness fees and expenses associated with discovery.

(C) An award of reasonable attorney's fees under this section does not affect or determine the amount of or the manner of computation of attorney's fees as between an attorney and the attorney's client.

(D) This section does not affect or limit the application of any provision of the Rules of Civil Procedure, the Rules of Appellate Procedure, or another court rule or section of the Revised Code to the extent that the provision prohibits an award of court costs, attorney's fees, or other expenses incurred in

connection with a particular civil action or appeal or authorizes an award of court costs, attorney's fees, or other expenses incurred in connection with a particular civil action or appeal in a specified manner, generally, or subject to limitations.

Effective Date: 07-06-2001; 04-07-2005

Public Documents

LUCAS COUNTY COURT OF COMMON PLEAS
J. BERNIE QUILTER, CLERK
700 ADAMS STREET
TOLEDO, OHIO

TIME: 12:02:39 AM
DATE: 9/10/2011

CASE: G-4801 -CI -201102848-
000

TITLE: MAYS VS TOLEDO HOSPITAL

JUDGE: JAMES D. BATES

FILING DATE: 4/19/2011

CASE TYPE: CI

STATUS: CLOSED/TERM'D

CIVIL

MONETARY AMOUNT:

ORIGINAL COURT:

PREVIOUS CASE NUMBER:

DOCKET/PAGE:

TAX TYPE:

STATE OF OHIO NUMBER:

Party	Counsel
PLAINTIFF 1:	
MAYS RENE 328 EAST CENTRAL AVENUE TOLEDO, OH 43608	PRO SE
DEFENDANT 1:	
TOLEDO HOSPITAL 2042 N COVE BLVD TOLEDO, OH 43606	KRISTEN A CONNELLY 4199310067 STEPHEN A KIVER & ASSOC 28350 KENSINGTON STE 200 PERRYSBURG, OH 435514174
DEFENDANT 2:	
MERCY ST ANNES HOSPITAL 3403 W SYLVANIA AVENUE TOLEDO, OH 43623	PETER N. LAVALETTE 4192497900 FOUR SEAGATE, NINTH FLOOR TOLEDO, OH 436042638

DATE	SEQ	EVENT
4/19/2011	2	Title : OPN:COMPLAINT FILED PARTY : P1 - MAYS RENE
4/19/2011	3	Title : MTN:EXTENSION OF TIME FILED PLAINTIFFS MOTION TO ENLARGE TIME TO FILE A MEDICAL MALPRACTICE AFFIDAVIT(S) OF MERIT PARTY : P1 - MAYS RENE
4/20/2011	1	Title : FRM:CIVIL SUMMONS ISSUED Form Number S2-72758 Issued by CY (CLERK) (6835) FRM:CIVIL SUMMONS ISSUED PARTY : D1 - TOLEDO HOSPITAL
4/20/2011	2	Title : FRM:CIVIL SUMMONS ISSUED Form Number S2-72759 Issued by CY (CLERK) (6835) FRM:CIVIL SUMMONS ISSUED PARTY : D2 - MERCY ST ANNES HOSPITAL
4/20/2011	3	Title : SRV:SUMM & COMPLT ISSUED SUMMONS AND COPY OF COMPLAINT SENT CERTIFIED MAIL # MERCY ST ANNES HOSPITAL 3403 W SYLVANIA AVE TOLEDO OH 43623 7008 1830 0004 5954 TOLEDO HOSPITAL 2042 N COVE BLVD

APPELLANT'S
EXHIBIT 1

- TOLEDO OH 43606
7008 1830 0004 7188 5961
PARTY : P1 - MAYS RENE
- 4/21/2011 1 Title : PLD:REQ PRODUCTION OF DOCUMNT
PARTY : P1 - MAYS RENE
- 4/21/2011 2 Title : PLD:NOTICE OF FILING
A LIVING WILL; A PRESCRIPTION SLIP FROM DR FRANK ABBATI
DASTED 12-24-2010; AND A APPLICATION FOR SUMMARY RELEASE
FROM ADMINISTRATION AND ENTRY GRANTING SUMMARY RELEASE
FROM ADMINISTRATION
PARTY : P1 - MAYS RENE
- 4/25/2011 1 Title : PLD:SUPPLEMENTAL
COMPLAINT
PARTY : P1 - MAYS RENE
- 4/26/2011 1 Title : PRO:MTN FOR EXTENSION GRANTED
This matter came on to be heard upon the Motion filed by
plaintiff Rene Mays for an Extension of Time to File
Affidavit of Merit. The Court finds said motion well
taken.
It is therefore ORDERED, ADJUDGED and DECREED that
plaintiff Rene Mays shall file her Affidavit of Merit on
or before MAY 24, 2011.
PARTY : -
- 4/26/2011 2 Title : RTN:CERTIFIED MAIL
RETURN RECEIPT FOR CERTIFIED MAIL # 7008 1830 0004 7188 5954
SIGNED: D SAVILLE
DATE: 4-25
MERCY ST ANNES HOSPITAL
PARTY : D2 - MERCY ST ANNES HOSPITAL
- 4/29/2011 1 Title : RTN:CERTIFIED MAIL
RETURN RECEIPT FOR CERTIFIED MAIL # 7008 1830 0004 7188 5961
SIGNED: ILLEGIBLE
DATE: NOT GIVEN
TOLEDO HOSPITAL
PARTY : D1 - TOLEDO HOSPITAL
- 5/4/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 05/04/2011
PERTAINING TO: PLTF RENE MAYS MOTION FOR EXTENSION OF TIME
PARTY : P1 - MAYS RENE
- 5/4/2011 2 Title : PLD:REQUEST FOR ADMISSIONS
PARTY : P1 - MAYS RENE
- 5/6/2011 1 Title : PLD:REQUEST FOR ADMISSIONS
SECOND REQUEST
PARTY : P1 - MAYS RENE
- 5/12/2011 1 Title : PLD:REQUEST FOR EXTENSION
OF TIME
PARTY : D1 - TOLEDO HOSPITAL
- 5/16/2011 1 Title : PLD:MEMORANDUM IN OPPOSITION
TO REQUEST FOR EXTENSION OF TIME
PARTY : P1 - MAYS RENE
- 5/20/2011 1 Title : PRO:MTN FOR EXTENSION GRANTED

DEFENDANT TOLEDO HOSPITAL GRANTED UNTIL JUNE 14, 2011 TO
RESPOND TO COMPLAINT.

PARTY : -

- 5/23/2011 1 Title : MTN:EXTENSION OF TIME FILED
IN WHICH TO MOVE PLEAD OR OTHERWISE RESPOND TO PLAINTIFFS
COMPLAINT
PARTY : D2 - MERCY ST ANNES HOSPITAL
- 5/23/2011 2 Title : MTN:EXTENSION OF TIME FILED
PLAINTIFFS SECOND MOTION TO ENLARGE TIME TO FILE A MEDICAL
MALPRACTICE AFFIDAVITS OF MERIT
PARTY : P1 - MAYS RENE
- 5/23/2011 3 Title : MTN:SUMMARY JUDGMENT FILED
ON THE ISSUE OF LIABILITY
PARTY : P1 - MAYS RENE
- 5/23/2011 4 Title : PLD:NOTICE
OF EFFORT TO RESOLVE AFFIDAVITS OF MERITS OR MATTER THROUGH
DISCUSSION WITH DR STEVEN M SIMON AND DR IRVING N POSALSKI
PARTY : P1 - MAYS RENE
- 5/23/2011 5 Title : PLD:AFFIDAVIT
PARTY : P1 - MAYS RENE
- 5/23/2011 6 Title : PLD:AFFIDAVIT
IN SUPPORT OF DEFAULT
PARTY : P1 - MAYS RENE
- 5/23/2011 7 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 05/25/2011
PERTAINING TO: DEFT TOLEDO HOSPITAL REQUEST FOR EXTENSION
AND JOURNAL ENTRY
PARTY : P1 - MAYS RENE
- 5/25/2011 1 Title : MTN:MOTION FILED
FOR RECONSIDERATION
PARTY : P1 - MAYS RENE
- 5/26/2011 1 Title : PLD:AFFIDAVIT
PARTY : P1 - MAYS RENE
- 5/26/2011 2 Title : PLD:MEMORANDUM IN OPPOSITION
TO REQUEST FOR EXTENSION OF TIME
PARTY : P1 - MAYS RENE
- 5/26/2011 3 Title : PLD:RESPONSE
TO PLAINTIFFS SECOND MOTION TO ENLARGE TIME TO FILE A
MEDICAL MALPRACTICE AFFIDAVIT(S) OF MERIT
PARTY : D1 - TOLEDO HOSPITAL
- 5/26/2011 4 Title : MTN:TO DISMISS FILED
PLAINTIFFS CLAIMS PURSUANT TO OHIO REVISED CODE 4705.01
PARTY : D1 - TOLEDO HOSPITAL
- 5/26/2011 5 Title : MTN:EXTENSION OF TIME FILED
TO OPPOSE PLAINTIFFS NUMEROUS PLEADINGS AND TO RESPOND TO
DISCOVERY REQUESTS
PARTY : D1 - TOLEDO HOSPITAL
- 5/31/2011 1 Title : PLD:AFFIDAVIT
OF RENE MAYS INOPPOSITION TO DEFENDANTS MOTION TO DISMISS
OPPOSITION TO DEFENDANTS MOTION FOR EXTENSION OF TIME TO

- OPPOSE PLAINTIFFS NUMEROUS PLEADINGS AND TO RESPOND TO
DISCOVERY REQUESTS AND REPLY TO DEFENDANTS RESPONSE TO
PLAINTIFFS SECOND MOTION TO ENLARGE TIME TO FILE A MEDICAL
MALPRACTICE AFFIDAVIT(S) OF MERIT
PARTY : P1 - MAYS RENE
- 5/31/2011 2 Title : PLD:NOTICE OF FILING
WAIVER OF RIGHT TO ADMINISTER OF THE REMAINING SURVIVING
PARENT AND OR SIBLINGS
PARTY : P1 - MAYS RENE
- 5/31/2011 3 Title : PLD:PLEADING FILED
PLAINTIFFS REQUEST TO TAKE JUDICIAL NOTICE AS TO THE
COMPLAINT EXHIBITS APPENDICES ATTACHED TO THE COMPLAINT ECT
PARTY : P1 - MAYS RENE
- 6/1/2011 1 Title : PRO:MTN FOR EXTENSION GRANTED
DEFENDANT MERCY ST. ANNE HOSPITAL GRANTTED UNTIL
JUNE 20, 2011 TO RESPOND TO PLAINTIFF'S COMPLAINT.
PARTY : -
- 6/1/2011 2 Title : MTN:EXTENSION OF TIME FILED
TO RESPOND TO PLAINTIFFS PURPORTED DISPOSITIVE MOTION
DISCOVERY REQUESTS AND VARIOUS PLEADINGS AND OTHER NOTICES
PARTY : D2 - MERCY ST ANNES HOSPITAL
- 6/1/2011 3 Title : MTN:TO DISMISS FILED
PLAINTIFFS COMPLAINT
PARTY : D2 - MERCY ST ANNES HOSPITAL
- 6/2/2011 1 Title : PRO:MTN FOR EXTENSION GRANTED
DEFENDANT, TOLEDO HOSPITAL GRANTED 28 DAYS FROM THE COURT'S
RULING ON THE DEFENDANT'S MOTION TO DISMISS TO RESPOND TO
ALL OF "PLAINTIFFS" PENDING PLEADINGS AND DISCOVERY REQUEST.
PARTY : -
- 6/2/2011 2 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/02/2011
PERTAINING TO: PLTF RENE MAYS ETC FOR RECONSIDERATION OF
THE COURTS ORDER GRANTING TOLEDO HOSPITALS MOTION FOR
EXTENSION OF TIME TO RESPOND
PARTY : P1 - MAYS RENE
- 6/2/2011 3 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/02/2011
PERTAINING TO: DEFT MERCY ST ANNE HOSPITAL MOTION FOR
EXTENSION OF TIME
PARTY : P1 - MAYS RENE
- 6/2/2011 4 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/03/2011
PERTAINING TO: DEFT THE TOLEDO HOSPITAL MOTION FOR EXTENSION
OF TIME
PARTY : P1 - MAYS RENE
- 6/2/2011 5 Title : MTN:MOTION TO VACATE
PLAINTIFFS RULE60(B) MOTION TO VACATE THIS COURTS ORDER
ALLOWING THE DEFENDANT MERY ST ANNE HOSPITAL UNTIL JUNE 20
2011 TO RESPOND TO PLAINTIFFS MERITORIOUS COMPLAINT
PARTY : P1 - MAYS RENE
- 6/3/2011 1 Title : PLD:MEMORANDUM IN OPPOSITION
TO DEFENDANT MERCY ST ANNE HOSPITAL MOTION TO DISMISS

PLAINTIFFS COMPLAINT AND FOR EXTENSION TO TIME TO RESPOND
TO PLAINTIFFS PURPORTED DISPOSITIVE MOTION DISCOVERY
REQUESTS AND VARIOUS PLEADINGS AND OTHER NOTICES
PARTY : P1 - MAYS RENE

- 6/3/2011 2 Title : PLD:PLEADING FILED
ITEMIZED LIST OF SPECIAL DAMAGES
PARTY : P1 - MAYS RENE
- 6/6/2011 1 Title : ORD:OPINION ISSUED SEE JE
AFTER CONSIDERATION OF PLAINTIFFS' MOTION FOR 2ND
ENLARGMENT OF TIME TO FILE MEDICAL MAL. AFFIDAVIT(S) OF
MERIT, IT IS DENIED. PLAINTIFFS WILL HAVE 10 DAYS FROM THE
DATE OF THIS ORDER TO FILE ANY AFFIDAVIT OF MERIT.
SEE ORDER.
PARTY : -
- 6/6/2011 2 Title : PRO:MTN FOR EXTENSION GRANTED
DEFENDANT ST. ANNE'S SHALL HAVE 28 DAYS FROM THE DATE OF
THE COURT'S RULING ON ITS PENDING MOTION TO DISMISS IN
WHICH TO RESPOND TO PLAINTIFFS PENDING MOTIONS, DISCOVERY
REQUESTS, AND OTHER DOCUMENTS FILED BY PLAINTIFF.
PARTY : -
- 6/6/2011 3 Title : EVT:OPIN & J.E. FILED & JOURN
EJOURNALIZED 06/07/2011
PERTAINING TO: OPINION AND JUDGMENT ENTRY
PARTY : P1 - MAYS RENE
- 6/7/2011 1 Title : PLD:SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF THE COMPLAINT AND MOTION FOR SUMMARY
JUDGMENT
PARTY : P1 - MAYS RENE
- 6/7/2011 2 Title : PLD:REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS
PARTY : D1 - TOLEDO HOSPITAL
- 6/8/2011 1 Title : PLD:MEMORANDUM
TO DEFENDANTS RESPONSE TO PLAINTIFFS SECOND MOTION TO
ENLARGE TIME TO FILE A MEDICAL MALPRACTICE AFFIDAVIT(S)
OF MERIT AND MOTION TO VACATE THE COURTS OPINION AND
JUDGMENT ENTRY FILED JUNE 6 2001
PARTY : P1 - MAYS RENE
- 6/8/2011 2 Title : PLD:AMENDED COMPLAINT
RULE 15(A) AMENDED COMPLAINT FOR MEDICAL MALPRACTICE AND
WRONGGFUL DEATH WITH JURY DEMAND ENDORSED HEREON
PARTY : P1 - MAYS RENE
- 6/9/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/14/2011
PERTAINING TO: MOTION FILED BY THE PLTF FOR THE COURT TO
VACATE THE GRANTING OF DEFT MERCY ST ANNES HSOPITALS MOTION
FOR EXTENSION OF TIME
PARTY : P1 - MAYS RENE
- 6/9/2011 2 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/14/2011
PERTAINING TO: DEFT MERCY ST ANNE HOSPITAL REQUEST FOR
EXTENSION OF TIME
PARTY : P1 - MAYS RENE

- 6/10/2011 1 Title : MIS:CORRESPONDENCE FILED
PARTY : P1 - MAYS RENE
- 6/10/2011 2 Title : PLD:AMENDED MOTION
FOR SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY PURSUANT TO
O.R.C. 2125.02(A)(1),2125.05(C), 2125.03, 2305.113
PARTY : P1 - MAYS RENE
- 6/14/2011 1 Title : ORD:PLAINTIFF'S MOTION DENIED
This matter came on to be heard upon Plaintiffs Motion to
Vacate this Court's Opinion and Judgment Entry dated June
6, 2011. The Court finds said motion not well taken.
It is therefore ORDERED, ADJUDGED and DECREED that
Plaintiffs' Motion to Vacate this Court's Opinion and
Judgment Entry dated June 6, 2011 is found not well taken
and DENIED.
PARTY : -
- 6/14/2011 2 Title : MTN:MOTION TO VACATE
AMENDED MOTION TO VACATE THE COURTS JUNE 6 2011 OPINION
AND JUDGMENT ENTRY
PARTY : P1 - MAYS RENE
- 6/14/2011 3 Title : PLD:REPLY BRIEF
IN SUPPORT OF MOTION TO DISMISS
PARTY : D2 - MERCY ST ANNES HOSPITAL
- 6/15/2011 1 Title : SRV:NOTICE OF APPEAL MAILED
MAILED NOTICE OF APPEAL DOCKETING STATEMENT AND PRAECIPE TO:
KRISTEN A CONNELLY
STEPHEN A KIVER AND ASSOCIATES
28350 KENSINGTON
SUITE 200
PERRYSBURG, OHIO 43551 4174
PARTY : P1 - MAYS RENE
- 6/15/2011 3 Title : SRV:COPIES MAILED
CONT FROM 1917:
PETER N LAVALETTE
FOUR SEAGATE
NINTH FLOOR
TOLEDO, OHIO 43604 2638
PARTY : P1 - MAYS RENE
- 6/15/2011 4 Title : PLD:NOTICE OF APPEAL FILED
PARTY : P1 - MAYS RENE
- 6/15/2011 5 Title : MTN:FOR LEAVE FILED
TO PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS
PARTY : P1 - MAYS RENE
- 6/17/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/20/2011
PERTAINING TO: PLTF'S MOTION TO VACATE THIS COURTS OPINION
AND JUDGMENT ENTRY
PARTY : P1 - MAYS RENE
- 6/20/2011 1 Title : MTN:REQUEST FOR
APPOINTMENT OF COUNSEL
PARTY : P1 - MAYS RENE
- 6/21/2011 1 Title : ORD:PLAINTIFF'S MOTION DENIED
This matter came on to be heard upon the Motion filed by

Plaintiffs for Leave to Proceed on Appeal Without Prepayment of Costs. The Court finds said motion not well taken.
It is therefore ORDERED, ADJUDGED and DECREED that Plaintiffs Motion for Leave to Proceed on Appeal Without Prepayment of Costs is found not well taken and DENIED.
PARTY : -

- 6/22/2011 1 Title : ORD:PLAINTIFF'S MOTION DENIED
PLAINTIFFS AMENDED MOTION TO VACATE COURT'S JUNE 6, 2011
OPN. & JE IS DENIED.
PARTY : -
- 6/22/2011 2 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/24/2011
PERTAINING TO: MATTER CAME ON TO BE HEARD UPON THE AMENDED
MOTION FILED BY PLTFs FOR AN ORDER TO VACATE THE COURTS
OPINON AND JUDGMENT ENTRY
PARTY : P1 - MAYS RENE
- 6/22/2011 3 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 06/24/2011
PERTAINING TO: MOTION FILED BY THE PLTFs FOR LEAVE TO
PROCEED ON APPEAL WITHOUT PREPAYMENT OF COSTS
PARTY : P1 - MAYS RENE
- 6/23/2011 1 Title : EVT:ORIG FILE IN APPEALS FILE
COURT OF APPEALS NUMBER CL-11-1145
PARTY : P1 - MAYS RENE
- 6/23/2011 2 Title : PLD:MEMORANDUM IN SUPPORT
OF REQUEST FOR APPOINTMNET OF COUNSEL
PARTY : P1 - MAYS RENE
- 6/28/2011 1 Title : ORD:PLAINTIFF'S MOTION DENIED
This matter is before the court on plaintiffs' motion for
appointment of counsel. "There is no generalized right of
counsel in civil litigation." State ex rel. Jenkins v.
Stern (1987), 33 Ohio St. 3d 108, 110. Accordingly,
plaintiffs' motion is not well-taken.
It is therefore ORDERED, ADJUDGED, AND DECREED that
plaintiffs' request for appointment of counsel is hereby
DENIED.
PARTY : -
- 6/28/2011 2 Title : MIS:CORRESPONDENCE FILED
BY GREGORY T HOWARD RE MEDICAL RECORDS
PARTY : -
- 6/28/2011 3 Title : MTN:MOTION TO VACATE
PLAINTIFFS MOTION TO VACATE THE COURTS ORDER DATED JUNE 28
2011 DENYING THEIR REQUEST FOR APPOINTMENT OF COUNSEL
PARTY : P1 - MAYS RENE
- 6/30/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
EJOURNALIZED 07/05/2011
PERTAINING TO: PLTFs MOTION FOR APPOINTMENT OF COUNSEL
PARTY : P1 - MAYS RENE
- 7/13/2011 1 Title : PLD:NOTICE OF APPEAL FILED
AMENDED NOTICE OF APPEAL
PARTY : P1 - MAYS RENE

- 7/20/2011 1 Title : MIS:MANDATE DISMISSING APPEAL
PARTY : P1 - MAYS RENE
- 7/21/2011 1 Title : MTN:SUMMARY JUDGMENT FILED
ON THE ISSUE OF LIABILITY
PARTY : P1 - MAYS RENE
- 7/25/2011 1 Title : MTN:MOTION FILED
PLAINTIFF RENE MAYS RENEWED MOTION FOR JUDICIAL NOTICE AND
MOTION IN SUPPORT OF HER PREVIOUSLY FILED RENEWED MOTION
FOR SUMMARY JUDGMENT ON THE ISSUE OF LIABILITY FILED
HEREIN ON JULY 21ST 2011
PARTY : P1 - MAYS RENE
- 7/25/2011 2 Title : MTN:MOTION FILED
PLAINTIFFS RENEWED MOTION FOR APPOINTMENT OF COUNSEL AND
MANDATORY MOTION TO TAKE JUDICIAL NOTICE OF THE STATEMENTS
CONTAINED IN THE COMPLAINT AND OF GIDEON V. WAINWRIGHT
PARTY : P1 - MAYS RENE
- 7/26/2011 1 Title : PLD:MEMORANDUM IN OPPOSITION
PLAINTIFFS RENEWED MEMORANDUM IN OPPOSITION TO DEFENDANTS
MOTIONS TO DISMISS
PARTY : P1 - MAYS RENE
- 7/26/2011 2 Title : MTN:SUMMARY JUDGMENT FILED
MOTION FOR SUMMARY JUDGMENT ON THE ISSUE OF HER FAILURE
TO FILE A MERIT AFFIDAVIT AND ON THE MANDATORY
REQUIREMENT TO TAKE JUDICIAL NOTICE OF THE
SPECIFIC EXHIBITS ATTACHED TO THE COMPLAINT
PARTY : P1 - MAYS RENE
- 7/27/2011 1 Title : ORD:OPINION ISSUED SEE JE
JUDGMENT ENTRY
It is ORDERED, ADJUDGED, AND DECREED that the motions to
dismiss filed by defendants, Toledo Hospital and Mercy St.
Anne Hospital, are hereby GRANTED.
It is further ORDERED, ADJUDGED, AND DECREED that Ms. Mays'
amended complaint is hereby DISMISSED without prejudice.
PARTY : -
- 7/27/2011 2 Title : CLS:DISMISS WITHOUT PREJUDICE
PARTY : -
- 7/27/2011 4 Title : EVT:OPIN & J.E. FILED & JOURN
EJOURNALIZED 07/27/2011
PERTAINING TO: OPINION AND JUDGMENT ENTRY
PARTY : P1 - MAYS RENE
- 7/28/2011 1 Title : PLD:AMENDED NOTICE OF APPEAL
PARTY : P1 - MAYS RENE
- 7/28/2011 3 Title : MTN:MOTION TO VACATE
THE COURTS DISMISSAL ORDER OF JULY 27, 2011 AND REQUEST FOR
AN ORDER ENTERING JUDGMENT IN HER FAVOR AND SETTING A TRIAL
DATE TO ASSESS DAMAGES
PARTY : P1 - MAYS RENE
- 7/28/2011 4 Title : PLD:NOTICE OF APPEAL FILED
AMENDED
PARTY : P1 - MAYS RENE
- 8/8/2011 1 Title : ORD:ORDER

PLAINTIFFS MOTION TO VACATE COURT'S DISMISSAL DENIED.
PARTY : -

- 8/10/2011 1 Title : MTN:TO AMEND FILED
 MOTION TO AMEND OR ALTER JUDGMENT OF JULY 27 2011
PARTY : P1 - MAYS RENE
- 8/11/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
 EJOURNALIZED 08/12/2011
 PERTAINING TO: PLTFS MOTION FOR THE COURT TO VACATE ITS
 DISMISSAL ORDER
PARTY : P1 - MAYS RENE
- 8/12/2011 1 Title : MTN:MOTION FILED
 MOTION TO REINSTATE CASE ON DOCKET
PARTY : P1 - MAYS RENE
- 8/15/2011 1 Title : PLD:NOTICE OF APPEAL FILED
 AMENDED
PARTY : P1 - MAYS RENE
- 8/15/2011 2 Title : PLD:NOTICE OF FILING
 COPIES OF CLAIMS RECORDS THAT CARE SOURCE HAD ON FILE
 FOR THE DECEDENT GALON HOWARD PER PLAINTIFFS REQUEST AND
 UPDATED ITEMIZED LIST OF SPECIAL DAMAGES
PARTY : P1 - MAYS RENE
- 8/15/2011 3 Title : MTN:FOR RELIEF FILED
 FROM JUDGMENT OF AUGUST 11,2011
PARTY : P1 - MAYS RENE
- 8/18/2011 1 Title : MIS:CORRESPONDENCE FILED
PARTY : P1 - MAYS RENE
- 8/23/2011 1 Title : ORD:PLAINTIFF'S MOTION DENIED
 This matter came on to be heard upon the Motion to Amend
 or Alter Judgment of July 27, 2011, Motion to Reinstate
 Case and Motion for Relief From Judgment of August 11,
 2011 both filed by Plaintiff. The Court finds said
 motions not well taken.
 It is therefore ORDERED, ADJUDGED and DECREED that
 Plaintiffs' Motion to Amend or Alter Judgment of July 27,
 2011, Motion to Reinstate Case and Motion for Relief From
 Judgment of August 11, 2011 are found not well taken and
 DENIED.
PARTY : -
- 8/24/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
 EJOURNALIZED 08/26/2011
 PERTAINING TO: MOTION TO AMEND OR ALTER JUDGMENT
PARTY : P1 - MAYS RENE

Disclaimer : The public record information available here reflects the docket entries and journals required by Ohio law to be kept by the Lucas County Clerk of the Court of Common Pleas. This information reflects the actual documents filed and kept at the Clerk of Courts Legal Division, located in the Lucas County Courthouse, at Adams and Erie Streets in Toledo, Ohio, 43624. The data entry, though generally deemed reliable, cannot be guaranteed. The information may appear on the Internet Docket before the entry is actually signed and journalized. Of course the proposed action is official only when signed and journalized. In no event shall the Lucas County Clerk of the Court of Common Pleas, or any other Lucas County department, agency, or official be held liable for damage of any nature, direct or indirect, arising from the use of this Internet product, including loss of profits, loss of savings, or other incidental or consequential damages.

Public Documents

LUCAS COUNTY COURT OF COMMON PLEAS
 J. BERNIE QUILTER, CLERK
 700 ADAMS STREET
 TOLEDO, OHIO

TIME: 12:00:39 AM
 DATE: 9/10/2011

CASE: G-4801 -CL -201101145-
 000
 TITLE: MAYS VS TOLEDO HOSPITAL AT EL
 JUDGE: SIXTH DISTRICT APPEALS
 COURT
 FILING DATE: 6/16/2011

STATUS: CLOSED/TERM'D
 CASE TYPE: CAL COURT OF APPEALS

MONETARY AMOUNT: DOCKET/PAGE:
 ORIGINAL COURT: TAX TYPE:
 PREVIOUS CASE NUMBER: STATE OF OHIO NUMBER:

Party	Counsel
APPELLANT 1: MAYS RENE 328 EAST CENTRAL AVENUE TOLEDO, OH 43608	PRO SE
APPELLEE 1: TOLEDO HOSPITAL 2042 N COVE BLVD TOLEDO, OH 43606	KRISTEN A CONNELLY 4199310067 STEPHEN A KIVER & ASSOC 28350 KENSINGTON STE 200 PERRYSBURG, OH 435514174
APPELLEE 2: MERCY ST ANNES HOSPITAL 3403 W SYLVANIA AVENUE TOLEDO, OH 43623	PETER N. LAVALETTE 4192497900 FOUR SEAGATE, NINTH FLOOR TOLEDO, OH 436042638

DATE	SEQ	EVENT
6/7/2011	1	Title : MIS:ATTORNEY LIST RENE MAYS 328 E CENTRAL AVE TOLEDO OH 43608 PRO SE APPELLANT KRISTEN A CONNELLY 28350 KENSINGTON STE 200 PERRYSBURG OH 43551 ATTY FOR APPELLEE TOLEDO HOSP PETER N LAVALETTE FOUR SEAGATE NINTH FL TOLEDO OH 43604 ATTY FOR APPELLEE ST ANNES PARTY : AT1 - MAYS RENE
6/7/2011	2	Title : EVT:DATE ORDER APEALED COMMON PLEAS CIVIL DIVISION C111-2848 JUDGE BATES PARTY : AT1 - MAYS RENE
6/16/2011	2	Title : OPN:NOTICE OF APPEAL - APPEALS PARTY : AT1 - MAYS RENE
6/16/2011	3	Title : PLD:PRAECIPE FILED PARTY : AT1 - MAYS RENE

APPELLANT'S
 EXHIBIT 2

6/16/2011 4 Title : PLD:DOCKETING STATEMENT
PARTY : AT1 - MAYS RENE

6/16/2011 5 Title : MTN:MOTION FILED
TO WAIVE COSTS OF APPEAL
PARTY : AT1 - MAYS RENE

6/16/2011 6 Title : EVT:RECORD DUE
JUNE 28 2011 NO TRANSCRIPT OF PROCEEDINGS
PARTY : AT1 - MAYS RENE

6/16/2011 7 Title : MTN:MOTION FILED
TO APPOINT COUNSEL
PARTY : AT1 - MAYS RENE

6/16/2011 8 Title : PLD:PLEADING FILED
DECLARATION IN SUPPORT OF MOTION TO APPOINT COUNSEL
PARTY : AT1 - MAYS RENE

6/23/2011 1 Title : MTN:MOTION FILED
TO REVERSE THE TRIAL COURT'S ORDER ISSUED ON OR ABOUT
JUNE 22 2011
PARTY : AT1 - MAYS RENE

6/24/2011 1 Title : MTN:MOTION FILED
MOTION TO VACATE
PARTY : AT1 - MAYS RENE

6/29/2011 1 Title : EVT:DECISION & JE FILED
SINCE THIS A CIVIL MATTER, THERE IS NO RIGHT TO APPOINTED
COUNSEL. THEREFORE, APPELLANT'S MOTION FOR APPOINTMENT
OF COUNSEL IS FOUND NOT WELL-TAKEN AND DENIED.
SINCE NO COSTS HAVE YET BEEN ASSESSED TO MAYS, HER MOTION
TO WAIVE APPELLATE COSTS ALTOGETHER IS PREMATURE AND DENIED
THOMAS J. OSOWIK, P.J.
ATTY'S NOTIFIED
E-JOURN 6/29/11
PARTY : AT1 - MAYS RENE

6/30/2011 1 Title : EVT:RECORD FILED
Consisting of the original pleading and exhibits thereto
filed in the trial court and a certified copy of the docket
and journal entries.
NO TRANSCRIPS OF PROCEEDINGS
PARTY : AT1 - MAYS RENE

6/30/2011 2 Title : EVT:LETTER RE FILING (APPEAL)
With App. R. 11 (B) sent to all parties this date by
regular mail.
PARTY : AT1 - MAYS RENE

6/30/2011 5 Title : MTN:FOR APPOINTMENT OF COUNSEL
PARTY : AT1 - MAYS RENE

6/30/2011 6 Title : PLD:BRIEF
MERIT
PARTY : AT1 - MAYS RENE

6/30/2011 7 Title : PLD:PLEADING FILED
REQUEST TO WAIVE ORAL ARGUMENT
PARTY : AT1 - MAYS RENE

7/6/2011 1 Title : MTN:TO DISMISS FILED
BY APPELLEE

PARTY : AE1 - TOLEDO HOSPITAL

7/7/2011 1 Title : PLD:PLEADING FILED
RESPONSE IN OPPOSITION TO MOTION TO DISMISS
PARTY : AT1 - MAYS RENE

7/11/2011 1 Title : MTN:MOTION FILED
MOTION TO DENY APPELLEES UNDERLYING MOTIONS TO DISMISS
PARTY : AT1 - MAYS RENE

7/12/2011 1 Title : PLD:PLEADING FILED
MEMORANDUM IN SUPPORT OF APPELLATE RULE 15
PARTY : AT1 - MAYS RENE

7/13/2011 1 Title : MTN:TO DISMISS FILED
BY APPELLEE
PARTY : AE2 - MERCY ST ANNES HOSPITAL

7/13/2011 2 Title : MTN: FOR EXTENSION FILED
TO FILE BRIEF
PARTY : AE1 - TOLEDO HOSPITAL

7/14/2011 1 Title : EVT:ORDER FILED & JOURNALIZED
IT IS HEREBY ORDERED THAT APPELLEE, THE TOLEDO HOSPITAL, IS
GRANTED UNTIL TWO WEEKS AFTER THIS COURT'S RULING ON
APPELLEE'S MOTION TO DISMISS TO FILE ITS BRIEF, IN THE
EVENT THE NMATTER IS NOT DISMISSED.
E-JOURNALIZED 7-14-11 OSOWIK
ATTYS, PRO SE, NOTIFIED
PARTY : AE1 - TOLEDO HOSPITAL

7/14/2011 3 Title : PLD:PLEADING FILED
APPELLANT'S APPELLATE RULE 15(A) MOTION FOR SUMMARY
JUDGMENT ON THE ISSUE OF LIABILITY
PARTY : AT1 - MAYS RENE

7/14/2011 4 Title : PLD:PLEADING FILED
APPELLANT'S APPELLATE RULE 15(A) RESPONSE IN OPPOSITION
PARTY : AT1 - MAYS RENE

7/15/2011 1 Title : MTN:MOTION FILED
MOTION TO VACATE
PARTY : AT1 - MAYS RENE

7/18/2011 1 Title : PLD:PLEADING FILED
RESPONSE IN OPPOSITION
PARTY : AT1 - MAYS RENE

7/18/2011 2 Title : MTN: FOR EXTENSION FILED
TO OPPOSE OR RESPOND TO APPELLANT'S FILINGS
PARTY : AE1 - TOLEDO HOSPITAL

7/19/2011 1 Title : PLD:PLEADING FILED
RESPONSE IN OPPOSITION TO MOTION FOR EXTENSION
PARTY : -

7/19/2011 2 Title : MTN: FOR ENLARGEMENT OF TIME
TO FILE BRIEF
PARTY : AE2 - MERCY ST ANNES HOSPITAL

7/20/2011 1 Title : PLD:PLEADING FILED
RESPONSE IN OPPOSITION TO UNWARRANTED MOTION FOR EXTENSION
PARTY : AT1 - MAYS RENE

- 7/20/2011 2 Title : EVT:DECISION & JE FILED
THIS CASE IS BEFORE THE COURT SUA SPONTE. IT HAS COME TO
THE COURT'S ATTENTION THAT PLAINTIFF-APPELLANT, RENE MAYS,
HAS FILED AN APPEAL FROM AN ORDER THAT IS NOT FINAL AND
APPEALABLE.
THE JUNE 7 JUDGMENT DENYING APPELLANT'S MOTION FOR AN
EXTENSION OF TIME TO FILE HER CIV.R.10(D) AFFIDAVIT OF
MERIT DOES NOT FIT INTO ANY OF THE CATEGORIES OF THIS
STATUTE. THE COURT HEREBY DISMISSES THIS APPEAL.
APPELLANT IS ORDERED TO PAY THE COSTS OF THIS APPEAL
PURSUANT TO APP.R.24. ALL PENDING MOTIONS ARE MOOT AND
DENIED.
E-JOURNALIZED 7/20/11 PIETRYKOWSKI OSOWIK YARBROUGH
MAILED TO ATTYS OF RECORD
COPY TO JUDGE, CLERK
PARTY : AT1 - MAYS RENE
- 7/20/2011 3 Title : EVT:MANDATE ISSUED
TO COMMON PLEAS CIVIL DIVISION
PARTY : AT1 - MAYS RENE
- 7/21/2011 1 Title : MTN:TO RECONSIDER FILED
BY APPELLANT
PARTY : AT1 - MAYS RENE
- 7/28/2011 1 Title : PLD:AMENDED MOTION
FOR RECONSIDERATION
PARTY : AT1 - MAYS RENE
- 7/28/2011 2 Title : PLD:AMENDED NOTICE OF APPEAL
OF RENE MAYS
PARTY : AT1 - MAYS RENE
- 7/29/2011 1 Title : PLD:BRIEF
RENEWED MERIT BRIEF
PARTY : AT1 - MAYS RENE
- 7/29/2011 2 Title : MTN:TO STAY FILED
OHIO CIVIL RULE 62(A)MOTION FOR STAY OF THE COURT'S
JULY 20, 2011 JUDGMENT PENDING AMENDED NOTICE OF APPEAL AND
MOTION TO VACATE FILED IN THE TRIAL COURT ON JULY 28, 2011
PARTY : AT1 - MAYS RENE
- 8/1/2011 1 Title : MTN:MOTION FILED
TO REVERSE THE TRIAL COURT'S ORDER ISSUED ON JULY 27M 2011.
GRANTING DEFENDANT'S MOTIONS TO DISMISS AND DISMISSING
PLAINTIFF RENE MAYS LAWFUL AMENDED COMPLAINT WITHOUT
PREJUDICE
PARTY : AT1 - MAYS RENE
- 8/18/2011 1 Title : EVT:DECISION & JE FILED
THE MOTION TO RECONSIDER IS DENIED.
E-JOURNALIZED 8/18/11 PIETRYKOWSKI OSOWIK YARBROUGH
MAILED TO ATTYS, PRO SE OF RECORD
PARTY : AT1 - MAYS RENE
- 8/30/2011 1 Title : EVT:NTCE APPEAL 2 SUP CRT JOUR
FILED IN THE SUPREME COURT OF OHIO, 8/24/11, SC#11-1457
PARTY : AT1 - MAYS RENE
- 9/2/2011 1 Title : EVT:RECEIPT FOR RECORD
PARTY : AT1 - MAYS RENE

- 9/6/2011 1 Title : EVT:NTCE APPEAL 2 SUP CRT JOUR
FILED IN THE SUPREME COURT OF OHIO, 8/30/11, SC#11-1485
PARTY : AT1 - MAYS RENE
- 9/8/2011 1 Title : MTN:FOR LEAVE FILED
TO FILE THE ATTACHED PROPOSED AMENDED NOTICE OF APPEAL
PARTY : AT1 - MAYS RENE

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Search Results: Case Number 2011-1457

The Supreme Court of Ohio

CASE INFORMATION

GENERAL INFORMATION

Case: 2011-1457 Discretionary Appeal (Non-felony)

Filed: 08/24/11

Status: Case Is Open

Rene Mays, Individually and as Fiduciary of the Estate of Galon Howard, Deceased, et al. v. Toledo Hospital, et al.

PARTIES and ATTORNEYS

Mays, Rene (Appellant)
Mercy St. Anne's Hospital (Appellee) Represented by: Lavalette, Peter (63542), Counsel of Record
Toledo Hospital (Appellee) Represented by: Connelly, Kristen (69817), Counsel of Record Baer, Elizabeth (64468)

PRIOR JURISDICTION

Jurisdiction Information	Prior Decision Date	Case Number(s)
Lucas County, 6th District Court of Appeals	08/18/2011	L111145

APPELLANT'S
EXHIBIT 3

DOCKET ITEMS

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Orders scanned prior to April 6, 2009, may not bear the signature of the Chief Justice. These online orders are identical to the original orders in all other respects.
- A  symbol in an online docket denotes a scanned filing or an electronic version of a Supreme Court order. Clicking the icon opens an image of the filing or order.

Date Filed	Description
08/24/11  View	Notice of appeal of Rene Mays, Individually and as Fiduciary of the Estate of Galon Howard, Deceased <i>Filed by: Mays, Rene</i>
08/24/11  View	Memorandum in support of jurisdiction <i>Filed by: Mays, Rene</i>
08/24/11	Affidavit of indigency <i>Filed by: Mays, Rene</i>
08/24/11  View	Motion for judicial notice <i>Filed by: Mays, Rene</i> <i>Filed by: Mays, Rene</i>
08/25/11	Copy of notice of appeal sent to clerk of court of appeals
08/26/11  View	Motion to proceed on the original record filed in the trial court and the court of appeals <i>Filed by: Mays, Rene</i> <i>Filed by: Mays, Rene</i>
08/31/11  View	Motion to consolidate with case number 2011-1485 <i>Filed by: Mays, Rene</i> <i>Filed by: Mays, Rene</i>
09/01/11  View	Motion to vacate trial court's opinion and judgment of 7/27/11 <i>Filed by: Mays, Rene</i> <i>Filed by: Mays, Rene</i>
09/09/11  View	Waiver of memorandum in response of Toledo Hospital <i>Filed by: Toledo Hospital</i>
09/09/11  View	Motion for sanctions pursuant to S.Ct. Prac. R. 14.5(A) of Toledo Hospital <i>Filed by: Toledo Hospital</i>

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Search Results: Case Number 2011-1485

The Supreme Court of Ohio

CASE INFORMATION

GENERAL INFORMATION

Case: 2011-1485 Discretionary Appeal (Non-felony); Claimed Appeal of Right
Filed: 08/30/11
Status: Case Is Open

Rene Mays, Individually and as Fiduciary of the Estate of Galon Howard, Deceased, et al. v. Toledo Hospital et al.

PARTIES and ATTORNEYS

Mays, Rene (Appellant)
Mercy St. Anne's Hospital (Appellee) Represented by: Lavalette, Peter (63542) , Counsel of Record
Toledo Hospital (Appellee) Represented by: Connelly, Kristen (69817) , Counsel of Record Baer, Elizabeth (64468)

PRIOR JURISDICTION

Jurisdiction Information	Prior Decision Date	Case Number(s)
Lucas County, 6th District Court of Appeals	07/20/2011	L111145

APPELLANT'S
EXHIBIT 4

DOCKET ITEMS

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Orders scanned prior to April 6, 2009, may not bear the signature of the Chief Justice. These online orders are identical to the original orders in all other respects.
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Date Filed	Description
08/30/11  View	Notice of appeal of Rene Mays <i>Filed by: Mays, Rene</i>
08/30/11  View	Memorandum in support of jurisdiction <i>Filed by: Mays, Rene</i>
08/30/11	Affidavit of indigency <i>Filed by: Mays, Rene</i>
08/30/11  View	Motion to proceed on the original record filed in the trial court and the court of appeals <i>Filed by: Mays, Rene</i>
08/31/11	Copy of notice of appeal sent to clerk of court of appeals
09/09/11  View	Waiver of memorandum in response of Toledo Hospital <i>Filed by: Toledo Hospital</i>
09/09/11  View	Motion for sanctions pursuant to S.Ct. Prac. R. 14.5(A) of Toledo Hospital <i>Filed by: Toledo Hospital</i>

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IN THE COURT OF APPEALS OF OHIO
TENTH APPELLATE DISTRICT

Alan Williams, :
 :
 Plaintiff-Appellant, :
 :
 v. : No. 09AP-28
 : (C.P.C. No. 07CVA04-5127)
 :
 James Griffith et al., : (REGULAR CALENDAR)
 :
 Defendants-Appellees. :

D E C I S I O N

Rendered on August 13, 2009

Alan Williams, pro se.

Reminger Co., L.P.A., and Lisa R. House, for appellees Villa Angela et al.

Lane Alton & Horst, LLC, and Gregory D. Rankin, for appellees Mohammed Shareef, M.D., and Mayyar Shareef, M.D.

APPEAL from the Franklin County Court of Common Pleas.

SADLER, J.

{¶1} Plaintiff-appellant, Alan Williams ("appellant"), appeals from a judgment of the Franklin County Court of Common Pleas which granted the defendants' motions to

APPELLANT'S
EXHIBIT 5

dismiss the complaint. Appellant filed a timely notice of appeal and raises the following assignments of error:

First Assignment of Error

Did the Trial Court Err in granting dismissal for defendant James Griffith and all other defendants on the bases that they should enjoy relief from all of the Plaintiffs non-medical claims because the plaintiff did not file an acceptable affidavit of merit to support his wrongful death and medical negligence claim. The plaintiffs Wrongful death claim was not based on medical negligence but assault and battery which claims cannot be consumed under the medical negligence claim.

Second Assignment of Error

The Trial Court did commit intentional abuse of discretion claiming that the Wrongful Death of the child was to be subsumed under these claims, thus making it appear as if the plaintiff[s] entire case was subjected to the statue of limitation. None of the claims against the Appellee was subjected to the Statute of Limitation.

Third Assignment of Error

Did the Trial Court err in granting defendants defense of the claims when the court claims that the plaintiff did not file within one year of the statue of limitation.

Fourth Assignment of Error

The court did grossly erred [sic] when it ruled that the administrator of the estate cannot pursue the wrongful death action in for his sole benefit.

Fifth Assignment of Error

Did the Trial Court Err in its [sic] decision that the Plaintiff had committed the Unauthorized Practice of Law?

Sixth Assignment of Error

Did the court err by denying the administrator of the estate to pursue his own claims.

Seventh Assignment of Error

The doctors James Griffith and the other defendants obtained no jurisdiction from the Probate Court to remove life sustaining or life prolonging treatment.

{¶2} The procedural history of the case is as follows: Plaintiffs Shamar Williams and Lakisha Williams (now deceased),¹ filed a pro se complaint on February 24, 2006, against James Griffith, Villa Angela Care Center, Lisa Mathis, RN, Lorrie Pratt, RPT, Larry Contr, RRT, Melissa Bishop, SRT, J. Newton, LPN, Larry Howard, RN, Korinne Knuebel, two maintenance personnel, all unnamed others of service team, Brian Colleran, Dianne Bozek, and co-administrator and owner unknown (collectively known as the "Villa Angela defendants"); Mohammed Shareef, M.D., and Nayyar Shareef, M.D., alleging that defendants failed to provide plaintiff Lakisha Williams with adequate medical care and this failure resulted in her death on August 26, 2004.

{¶3} On April 13, 2006, plaintiffs voluntarily dismissed the complaint pursuant to Civ.R. 41(A) and refiled it on April 13, 2007, as permitted by R.C. 2305.19, the Savings Statute.² The main causes of action included an action for wrongful death and medical malpractice involving the care of plaintiff, Lakisha Williams, in the Villa Angela nursing home before her death on August 26, 2004. The causes of action listed in the complaint are as follows: wrongful death, medical malpractice, malicious wrongful death, false imprisonment, tampering and destroying records, interference with family relations, illegal searches and invasions of privacy, violation of patient rights, menacing

¹ Although the complaint included plaintiffs Alan Williams, Shamar Williams, and Lakisha Williams, only Alan Williams appealed the dismissal of the complaint.

² The original complaint is not part of the file, but the dates are referenced in other filed papers.

threats, intentional infliction of emotional distress, professional malpractice, violations of the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, violation of HIPPA regulations, child abuse, violations of the Racketeer Influenced and Corrupt Organizations Act, Sections 1961-1968, Title 18, U.S.Code ("RICO"), loss of consortium, conspiracy to commit fraud, assault and battery, and cruel and unusual punishment.³

{¶4} The trial court in this case, granted the defendants' motions to dismiss finding that the wrongful death claim should be dismissed because it included allegations of medical negligence, and thus required the filing of an affidavit of merit pursuant to Civ.R. 10(D). The trial court found that plaintiffs had not filed the required affidavit of merit, nor had they explained why they had not done so in the nineteen months after they had refiled their complaint. The trial court also found that the medical negligence claim was time-barred by the one-year statute of limitations. The trial court found that the wrongful death claim was filed within the two-year statute of limitations for a wrongful death claim but dismissed that claim because the plaintiffs did not have standing or the capacity as a practicing attorney to maintain the claim. Thus, the trial court dismissed the complaint pursuant to Civ.R. 12(B)(6).

{¶5} Although the trial court dismissed the complaint without prejudice, the plaintiffs had already dismissed the complaint once, pursuant to Civ.R. 41(A), and refiled under the Savings Statute. Since the Savings Statute may only be used once,

³ The complaint did not contain a signed certificate of service and pursuant to Civ.R. 5(D), papers shall not be considered until proof of service is endorsed thereon or separately filed. However, attached to the complaint is an unsigned certificate of service, and the file contains the summons forms from the clerk of courts. Since the defendants eventually received service, we shall consider the complaint.

this dismissal by the trial court had the effect of being a dismissal with prejudice. See *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 1997-Ohio-395.

{¶6} In order for a trial court to grant a motion to dismiss for failure to state a claim upon which relief may be granted, "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union* (1975), 42 Ohio St.2d 242, syllabus. In construing the complaint upon a Civ.R. 12(B)(6) motion, a court must presume all factual allegations contained in the complaint to be true and make all reasonable inferences in favor of the nonmoving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190, 192. Appellate review of a judgment granting a Civ.R. 12(B)(6) motion to dismiss is de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶5.

{¶7} In his first assignment of error, appellant contends that the trial court erred in granting dismissal of the non-medical claims because the plaintiffs did not file an acceptable affidavit of merit to support the wrongful death and medical negligence claims. Appellant argues that the wrongful death claim was based on assault and battery rather than medical negligence, and therefore should not have been treated as a medical negligence claim. While appellant raised non-medical claims other than assault and battery in his complaint, on appeal he only raises the assault and battery claims as the basis for his wrongful death claim.

{¶8} Even if we accepted appellant's assertion that the trial court erred in finding that the assault and battery constituted part of the medical negligence claim, and thus required an affidavit of merit, appellant's claim for assault and battery would not entitle him to recovery. Appellant's assertions of assault and battery are based on

criminal statutes, and a claim for civil damages is inappropriate because criminal statutes do not create civil causes of action. *Biomedical Innovations, Inc. v. McLaughlin* (1995), 103 Ohio App.3d 122, 126.

{¶9} Appellant also seems to argue that the trial court was biased against appellant in favor of the government and argues that he was given no notice of the intention to dismiss his complaint. There is nothing in Civ.R. 12(B)(6) that requires a trial court to notify a plaintiff of its intention to grant a motion to dismiss for failure to state a claim upon which relief can be granted. See *Thrower v. Slaby* (Apr. 19, 1995), 9th Dist. No. 16935. Moreover, appellant received copies of the motions to dismiss and filed responses so he had notice that the court would rule on the motions and could dismiss the complaint.

{¶10} Therefore, appellant's first assignment of error is overruled.

{¶11} Appellant also argues that the trial court erred in finding that he had committed the unauthorized practice of law by pursuing the claims of others in connection with his wrongful death claim. The trial court found that appellant could represent himself or could present himself as the administrator of Lakisha's estate, but he could not represent others because to do so would constitute the unauthorized practice of law. Appellant argues that he is the administrator of Lakisha's estate, and that he has standing to represent his own and his son's interests.⁴

{¶12} A civil action must be asserted by the real party in interest because a party who is not the real party in interest lacks standing to prosecute the action. *State ex rel.*

⁴ Although these arguments were presented in appellant's brief in connection with the first assignment of error, it appears that they actually relate to appellant's fourth, fifth, and sixth assignments of error.

Tubbs Jones v. Suster, 84 Ohio St.3d 70, 77, 1998-Ohio-275. Only a personal representative of the decedent has standing to bring a wrongful death action. R.C. 2125.02(A)(1). In Ohio, a personal representative of the decedent is a court-appointed administrator or executor of the decedent's estate and is not defined according to familial relationships as in other states. *Ramsey v. Neiman*, 69 Ohio St.3d 508, 511, 1994-Ohio-359. The *Ramsey* court listed good policy reasons for requiring that the person bringing the wrongful death action be appointed by a court, because such a requirement eliminates the possibility that the defendant will face more than one lawsuit, allows for potential conflicts of interest to be revealed in advance of the filing of the action, and ensures to some degree that the wrongful death action will be brought by a person who will act in the best interests of the beneficiaries, who are the real parties in interest. *Id.*

{¶13} "Thus, while a surviving spouse, child, or parent may be the real party in interest in the case, a suit brought by anyone other than the personal representative, admittedly a nominal party, will not meet the statutory requirements for the action." *Schaffer v. Gateway Harvestore, Inc.* (1998), 129 Ohio App.3d 448, 455, citing *Burwell v. Maynard* (1970), 21 Ohio St.2d 108, 110. "[A] personal representative of a decedent's estate stands in the shoes of the decedent to assert claims on behalf of the estate." *Hosfelt v. Miller*, 7th Dist. No. 97-JE-50, 2000-Ohio-2619. Thus, the personal representative represents the interests of the statutory next of kin. R.C. 2125.02(A)(1).

✓ {¶14} Section 2(B)(1)(g), Article IV of the Ohio Constitution grants the Ohio Supreme Court constitutional power to regulate and control all matters relating to the practice of law in the state. Gov. Bar. R. VII § 2(A) defines the unauthorized practice of

law as "the rendering of legal services for another by any person not admitted to practice in Ohio." R.C. 4705.01 also provides that: "No person shall be permitted to practice as an attorney and counselor at law, or to commence, conduct, or defend any action or proceeding in which the person is not a party concerned, either by using or subscribing the person's own name, or the name of another person, unless the person has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules." "The law recognizes that a person has the inherent right to proceed pro se in any court, but that right pertains only to that person. It does not extend to the person's spouse, child, or solely owned corporation." *State v. Block*, 8th Dist. No. 87488, 2007-Ohio-1979, ¶4.

{¶15} Appellant was appointed as the administrator of the estate of Lakisha Williams. However, he is not an attorney. Thus, while he may represent himself, pro se, he may not represent others that the statute designates as next of kin, because to represent others would constitute the unauthorized practice of law. As the trial court found, appellant could not proceed pro se by representing only himself, because the action has to be maintained by the personal representative on behalf of the statutory next of kin in one action. R.C. 2125.02. Thus, the trial court did not err in finding that appellant could not represent his son without constituting the unauthorized practice of law.

{¶16} Appellant contends that the trial court refused to address the case law that he had cited, and argues that if the trial court had read *In re Guardianship of Stein*, 105 Ohio St.3d 30, 2004-Ohio-7114, it would have not dismissed the complaint. However, the *Stein* case does not address the standing issue. In *Stein*, the Supreme Court of

Ohio determined that the probate court did not have the authority to appoint a limited guardian with the power to withdraw all life-sustaining support in the absence of a termination of parental rights. The right still belonged to the parents. However, whether appellant had the power to make life and death decisions regarding his daughter did not affect which plaintiffs had standing to bring a wrongful death action, which was the basis of this decision.

{¶17} Appellant's fourth, fifth, and sixth assignments of error are not well-taken, and are therefore overruled.

{¶18} In his brief, appellant cites *Weaver v. Edwin Shaw Hosp.*, 104 Ohio St.3d 390, 2004-Ohio-6549. In the syllabus of *Weaver*, the Supreme Court of Ohio determined that the term "disability" as used in R.C. 2305.16 refers only to the two descriptions contained in that statute—being within the age of minority or being of unsound mind. Also, the appointment of a guardian for a person within the age of minority or for a person of unsound mind neither removes the disability referred to in R.C. 2305.16, nor commences the running of the statute of limitations.

{¶19} Appellant also cites *Halbert v. Emch* (Sept. 20, 1985), 6th Dist. No. L-84-310, in which the Sixth District Court of Appeals found that despite R.C. 2305.11(B), under R.C. 2305.11(A), an incompetent's cause of action does not accrue when the guardian discovered or should have discovered the alleged medical malpractice.

{¶20} Appellant appears to be raising *Weaver* and *Halbert* for the proposition that the statute of limitations for the medical malpractice action was tolled in this case, which apparently relate to his second and third assignments of error. However, appellant did not provide any argument, just the case citations. App.R. 16(A)(7) states,

in relevant part, that an appellant's brief shall include "[a]n argument containing the contentions of the appellant with respect to each assignment of error presented for review and the reasons in support of the contentions." App.R. 12(A)(2) provides that "[t]he court may disregard an assignment of error presented for review if the party raising it * * * fails to argue the assignment separately in the brief, as required under App.R. 16(A)." It is appellant's duty to demonstrate his assigned error through legal argument supported by citations to legal authority and facts from the record. *Whitehall v. Ruckman*, 10th Dist. No. 07AP-445, 2007-Ohio-6780, ¶19, citing *State v. Vinson*, 9th Dist. No. 23739, 2007-Ohio-6045, ¶25.

{¶21} Although appellate courts often afford some leniency to pro se appeals, they do not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *State ex rel. Karmasu v. Tate* (1992), 83 Ohio App.3d 199, 206. Ohio courts generally hold pro se litigants to the same rules and procedures as those litigants who retain counsel. Pro se litigants are not entitled to greater rights, and they must accept the results of their own mistakes. *Whitehall* at ¶21. However, "[i]f a court cannot understand the arguments advanced by a party, relief cannot be granted." *State v. Dunlap*, 10th Dist. No. 05AP-260, 2005-Ohio-6754, ¶10.

{¶22} Therefore, appellant's second and third assignments of error are overruled.

{¶23} In his seventh assignment of error, appellant contends that the defendants obtained no jurisdiction from the probate court to remove life-sustaining or life-prolonging treatment but does not allege an error by the trial court. However, appellant provided no separate legal argument for this assignment of error as required by App.R.

16(A). As stated above, App.R. 12(A)(2) provides that the court may disregard an assignment of error presented if the party raising it fails to argue the assignment separately in the brief. It is appellant's duty to demonstrate the errors of the trial court through legal argument supported by citations to legal authority. *Whitehall*, supra.

{¶24} Therefore, appellant's seventh assignment of error is overruled.

{¶25} Having overruled each of appellant's seven assignments of error, the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

FRENCH, P.J., and McGRATH, J., concur.
