

ORIGINAL

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

IN THE OHIO SUPREME COURT

RENE MAYS, Individually and as	:	Case No. CI0201102848
Fiduciary of the Estate of Galon Howard,	:	Court of Appeals No. 11-1145
Deceased, et al.,	:	
	:	
Plaintiff-Appellant,	:	On Appeal from the Lucas
	:	County Court of Appeals,
-vs-	:	Sixth District
	:	
TOLEDO HOSPITAL, et al.,	:	
	:	
and	:	
	:	
Mercy St. Anne's Hospital, et al.	:	
	:	
Defendants-Appellees.	:	

NOTICE THAT A MOTION TO CERTIFY A CONFLICT IS PENDING IN THE LUCAS COUNTY COURT OF APPEALS PURSUANT TO S. CT. PRAC. R. 4.4(A) OF APPELLANT RENE MAYS; NOTICE OF FILING A PROPER NOTICE OF VOLUNTARILY DROPPING THE REMAINING PLAINTIFFS FROM THE LAWSUIT FILED IN THE LUCAS COUNTY COURT OF COMMON PLEAS

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 Elizabeth E. Baer, Esq.
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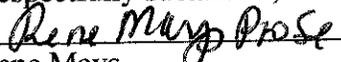
Counsel for Appellee,
 Mercy St. Anne's Hospital

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 SEP 26 2011
 CLERK OF COURT
 SUPREME COURT OF OHIO

May it please the Court this document is being filed to notify the Court that Ms. Mays has timely moved the court of appeals to certify a conflict in the underlying case and that such motion remains pending in the court of appeals. A true and accurate copy of the motion to certify a conflict is attached hereto as Exhibit 1 for this Court's review. As this Court knows 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 the appeal and the second Notice of Appeal is an appeal from the Court of Appeals July 20, 2011 decision dismissing her appeal (Case Nos. 11-1457, 11-1485). As such, in accordance with S. Ct. Prac. R. 4.4(A), Ms. Mays would respectfully asks that this Court stay its consideration of the jurisdictional memoranda(s) filed in the above-captioned appeals until the Court of Appeals has determined whether to certify a conflict in the instant case.

Also, please let the attached documents serve as a notice that Ms. Mays has submitted a document named a "Proper Notice of Voluntarily Dropping the Remaining Plaintiffs from this Suit (underlying case)" in the trial court and on both counsel of record for the Appellees. A true and accurate copy of that notice is incorporated herein by reference and attached hereto as Exhibit 2 for this Court's review.

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 22nd day of September, 2011 to:

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Dated: 09/16/2011

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Counsel for Defendant,
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Rene Mayo Pro Se
Plaintiff-Appellant-pro-se

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2011 SEP 19 A 9 20

RECORD NO. 11-1145

COMMON PLEAS COURT
BERNIE QUIVETER
CLERK OF COURTS

THE OHIO SIXTH DISTRICT COURT OF APPEALS

RENE MAYS, Individually and as : Case No. CI0201102848
Fiduciary of the Estate of Galon Howard,
Deceased, et al., :

Plaintiffs, :

-vs- :

TOLEDO HOSPITAL, et al., :

and :

Mercy St. Anne's Hospital, et al. :

Defendants. :

**APPELLANT'S MOTION TO CERTIFY A CONFLICT TO THE OHIO STATE
SUPREME COURT; ALTERNATIVE, MOTION TO REVERSE THE TRIAL
COURT'S JUDGMENT AND TO REMAND THIS CASE TO THE TRIAL COURT
FOR FURTHER PROCEEDINGS**

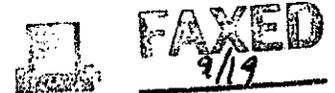
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APPELLANT'S
EXHIBIT 1

 **FAXED**
9/19

Plaintiff-Appellant Rene Mays moves this Court, pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution and App. R. 25(A) to certify a conflict with this Court's August 18, 2011 Judgment and the Ohio State Supreme Court's ruling in *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128 to the Ohio Supreme Court. The issue proposed for certification is the judgment prior to the trial court's ruling finding that she was without authority to prosecute any of the claims at issue in this matter as a non-attorney when she had dismissed the remaining plaintiffs from suit and asked that they be appointed counsel to represent them in both Courts. (See, June 29, 2011 Judgment Entry of the Lucas County Court of Appeals and the July 5, 2011 and July 27, 2011 Judgment Entries of the Lucas County Court of Common Pleas).

As such, the trial court's decision granting summary judgment based upon Appellant's non-attorney status became a final appealable order when Appellant voluntarily dismissed the remaining plaintiffs from the suit and asked that they be appointed counsel to represent them pursuant to *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128. This case will not be a case for first impression before the Supreme Court of Ohio. Id.

Arguments in support of Plaintiff-Appellant's Motion are set forth below in the accompanying Memorandum in Support.

Respectfully submitted,

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Plaintiffs-pro-se

MEMORANDUM IN SUPPORT

Ms. Mays initially filed a complaint on behalf of the Estate, parents, siblings, and children of Galon Howard. (See, April 19, 2011, Complaint filed with the trial court). After being notified by the Defendants that she could not represent another person as a non-attorney, she corrected this notion by voluntarily dismissing the remaining plaintiffs to the action, and requesting that the trial court and this Court to appoint counsel to represent them but the same was rejected by both Courts. (See, May 26, 2011 motion to dismiss filed by Toledo Hospital, June 1, 2011 Civ. R. 12(B)(6) motion to dismiss filed by Mercy St. Anne Hospital and June 29, 2011 Judgment Entry of the Lucas County Court of Appeals and the July 5, 2011 and July 27, 2011 Judgment Entries of the Lucas County Court of Common Pleas). On July 27, 2011, the trial court granted the Civ. R. 12(B)(6) 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 Civ. R. 15(A) Amended Complaint regarding her pro-se claims only, Ms. Mays filed a Notice of Appeal, Motion to Appoint Counsel and Merit Brief with this Court on or about 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. On July 20, 2011, this Court dismissed the appeal on motion or sua sponte, finding that there was no final appealable order in the case (several other pleadings were ruled moot and denied by this Court. On July 21, 2011, Ms. Mays filed a motion to reconsider, one week later, on July 28, 2011, Ms. Mays filed an Amended motion to reconsider the dismissal (the day after the trial court's dismissal of her

amended complaint without prejudice on the basis of her non-attorney status).

On July 29, 2011, Ms. Mays filed a Civ. R. 62(A) motion for stay of this Court's July 20, 2011 judgment on the basis that the trial court's dismissal without prejudice transformed the interlocutory summary judgment into a final appealable order under R.C. 2505.02. On August 18, 2011, this Court issued a decision and judgment dismissing both the motion for reconsideration and amended motion for reconsideration. But this Court held that it would treat Ms. Mays July 29, 2011 pleading as a timely motion for reconsideration. (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 and that it made no finding as to whether the July 27, 2011 judgment by the trial court dismissing appellant's medical malpractice complaint without prejudice constitutes a final appealable order under R.C. 2505.02. In support of her position on these issues, the Appellant presents the following arguments.

LAW AND ARGUMENT

Proposition of law No. 1: The trial court erred when it granted Appellees' Civ. R. 12(B)(6) motion to dismiss on the grounds of her non-attorney status, when Appellant had clearly dismissed the remaining Plaintiffs prior to its ruling on Appellees' Civ. R. 12(B)(6) Motion

The Court's majority definitively held that a voluntary dismissal renders the parties as if no suit had ever been filed against the dismissed parties. *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128. In this matter, Ms. Mays voluntarily dismissed the remaining plaintiffs to the action, and requested that the trial court and this Court to appoint counsel to represent them but it were rejected by both the trial court and this Court. (See, June 29, 2011 Judgment Entry of the Lucas County Court of Appeals and the July 5, 2011 and July 27, 2011 Judgment Entries of the Lucas County Court of

Common Pleas).

In her suit, Ms. Mays, who is also the administrator of her deceased brother's estate, she claimed that the Defendant Mercy St. Anne Hospital was liable for the death of her brother resulting from the inadequate care he received from the hospital's staff and claimed a survival claim based upon defendants' medical negligence; Mercy St. Anne Hospital's Civ. R. 12(B)(6) motion to dismiss because of Ms. Mays non-attorney status. The trial court granted Mercy St. Anne Hospital's Civ. R. 12(B)(6) motion to dismiss, stating in its order, "It is further Ordered, Adjudged, and Decreed that Ms. Mays' amended complaint is hereby dismissed without prejudice." Accordingly, the trial court erred when it granted Appellees' Civ. R. 12(B)(6) motion to dismiss on the grounds of her non-attorney status, when Appellant had clearly dismissed the remaining Plaintiffs prior to its ruling on Appellees' Civ. R. 12(B)(6) Motion.

Proposition of law No. 2: The trial court's decision granting summary judgment based on Appellant's non-attorney status became a final appealable order when Appellant had dismissed the remaining Plaintiffs prior to its ruling on Appellees' Civ. R. 12(B)(6) Motion

Prior to the trial court's dismissal, Ms. Mays filed a timely notice of appeal in the Lucas County Court of Appeals. This Court granted Mercy St. Anne Hospital's motion to dismiss stating in its order, "... Ms. Mays, has filed an appeal from an order that is not final and appealable... in response, defendants-appellees, Toledo Hospital and Mercy St. Anne Hospital, filed a motion to dismiss and a motion for summary judgment ... those motions remains pending before the trial court..." (See, July 20, 2011 Judgment Entry of the Lucas County Court of Appeals).

This Court then denied Ms. Mays' motion to reconsider noting at the time of the dismissal, the trial court's action was still pending and that it made no finding as to

whether the July 27, 2011 dismissal judgment constitutes a final appealable order under R.C. 2505.02, despite Ms. Mays argument to the contrary that the trial court's dismissal without prejudice transformed the interlocutory dismissal into a final appealable order under R.C. 2505.02 which it rejected by order filed on August 18, 2011. (See, August 18, 2011 Decision and Judgment of the Court of Appeals.

Ms. Mays asserts that the voluntary dismissal of the remaining plaintiffs without prejudice transformed the interlocutory Civ. R. 12(B)(6) dismissal into a final appealable order under R.C. 2505.02. As such, based upon the Ohio Supreme Court's definitive ruling that a trial court's decision granting summary judgment in a civil action becomes a final appealable order when the plaintiff voluntarily dismisses the remaining plaintiffs (parties) to the suit, therefore, Ms. Mays asks this Court to either certify the said conflict with this Court's August 18, 2011 Judgment and the Ohio State Supreme Court's ruling in *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128 to the Ohio Supreme Court, or otherwise reverse the judgment of the trial court and to remand this cause to the Court for further proceedings pursuant to *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128.

Accordingly, the trial court's decision granting summary judgment based on Appellant's non-attorney status became a final appealable order when Appellant had dismissed the remaining Plaintiffs prior to its ruling on Appellees' Civ. R. 12(B)(6) Motion. (See, June 29, 2011 Judgment Entry of the Lucas County Court of Appeals and the July 5, 2011 and July 27, 2011 Judgment Entries of the Lucas County Court of Common Pleas).

CONCLUSION

For these reasons, Plaintiff-Appellant Rene Mays respectfully requests that this Court certify the said conflict with this Court's August 18, 2011 Judgment and the Ohio State Supreme Court's ruling in *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128 to the Ohio Supreme Court, and/or otherwise, in the alternative, to reverse the judgment of the trial court and to remand this cause to that Court for further proceedings pursuant to *Denham v. New Carlisle*, 86 Ohio St. 3d 594, 1999-Ohio-128.

Respectfully submitted,

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Plaintiffs-pro-se

PROOF OF SERVICE

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Counsel for Defendant,
Mercy St. Anne's Hospital

Dated: 09/19/2011

Rene Mays Pro Se
Plaintiff's Rene Mays, Pro-se

ORIGINAL

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LUCAS COUNTY

2011 SEP 20 P 2:07

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF LUCAS COUNTY, OHIO

RENE MAYS, Individually and as	:	Case No. CI0201102848
Fiduciary of the Estate of Galon Howard,	:	
Deceased, et al.,	:	Judge James D. Bates
	:	
Plaintiffs,	:	
	:	
-vs-	:	
	:	
TOLEDO HOSPITAL, et al.,	:	
	:	
and	:	
	:	
Mercy St. Anne's Hospital, et al.	:	
	:	
Defendants.	:	

**PROPER NOTICE OF VOLUNTARILY DROPPING THE REMAINING
 PLAINTIFFS FROM THIS SUIT**

As permitted by Civ. R. 21, and in the interests of clarity in conjunction with her previous rejected requests for appointed counsel, plaintiff Rene Mays hereby voluntarily drops the remaining plaintiffs in this matter from this suit due to the fact that she is not an attorney and that she is prohibited from representing any person other than herself. See, 4705.01. By order of this Court, the Court determined that the claims of any plaintiff, other than Rene Mays' personal claims, must be dismissed. (See, this Court's Dismissal Order of July 27, 2011). With that being said the plaintiff Rene Mays desires to sever the claims that she had brought on behalf of the remaining plaintiffs and proceed with

APPELLANT'S
 EXHIBIT 2

those claims separately on her own behalf in this matter.

SCANNED
Accordingly, this Court should reconsider its July 27, 2011 judgment and modify it to read as follows: "It is further ORDERED, ADJUDGED, AND DECREED that Ms. Mays' amended complaint is hereby DISMISSED without prejudice as to any of the remaining dropped plaintiffs." See Civ. R. 60(B)(1)/(5).

Respectfully submitted,
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Plaintiff-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 20th day of September, 2011 to:

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Toledo, Ohio 43604

Counsel for Defendant,
Mercy St. Anne's Hospital

Dated: 09/20/2011

Rene Mays Pro Se
Plaintiff's Rene Mays, Pro-se