ORIGINAL

No. 13-0021

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
NINTH APPELLATE DISTRICT
SUMMIT COUNTY, OHIO
CASE NO. CA-25938

THERESA HAYWARD

Plaintiff-Appellee

v.

SUMMA HEALTH SYSTEM/AKRON CITY HOSPITAL et al.

Defendants-Appellants

DEFENDANTS-APPELLANTS SUMMA HEALTH SYSTEM/AKRON CITY HOSPITAL, STEVEN A. WANEK, M.D. AND MICHAEL J. CULLADO, M.D.'S MOTION FOR RECONSIDERATION

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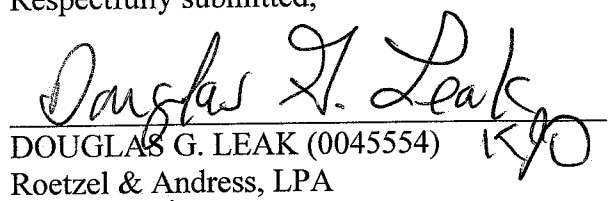
Respectfully submitted,



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MOTION FOR RECONSIDERATION

This is a case in which the Ninth District Court of Appeals erroneously reversed a jury's verdict based upon a single jury instruction of which Plaintiff waived her objection to and, also, no prejudice resulted from the jury charge itself. The fact that a legally flawed ruling permeated the appellate proceedings is confirmed by this Court's acceptance of this appeal on Defendants' Proposition of Law No. I. In accepting jurisdiction over Defendants' Proposition of Law No. I, this Court recognized that the Ninth District's Decision is worthy of this Court's jurisdiction.

This Court should, likewise, accept jurisdiction over Defendants' Proposition of Law No. II in order to resolve the "admitted" conflict within the Ninth District between this case and the Ninth District's Decision in *Van Scyoc vs. Huba,* 9th Dist. No. 22637, 2005-Ohio-6322.[1] Not only has the Ninth District created a conflict within the Ninth District, it has also created confusion throughout Ohio as to the proper manner in which a party must object to a particular jury instruction and what constitutes either a waiver or withdrawal of a jury charge objection.

Why Proposition of Law No. II is also of public and great general interest necessitating this Court's review is already supported by another Justice of this Court who agrees that Defendants' Proposition Of Law No. II should be accepted for review. Justice O'Neill correctly recognized the vital importance of Proposition of Law No. II and that this Court should accept jurisdiction over both Defendants' Propositions of Law Nos. I and II. This Court should similarly accept jurisdiction and review this Proposition of Law No. II.

Pursuant to S.Ct. Prac. R. XI, §2(B)(1), Defendants hereby move this Court to reconsider its six-to-one decision of March 27, 2013 declining to accept jurisdiction over Proposition of

[1] Defendants are not seeking reconsideration of this Court's denial of jurisdiction of their Proposition of Law No. III.

Law No. II.[2] Mindful that a motion for reconsideration shall not constitute a reargument of the issues, Defendants reemphasize the significant legal implications and collateral consequences for litigants throughout all of Ohio that will arise if the Ninth District Court of Appeals' Decision is left undisturbed. This case presents important questions for this Court's clarification and guidance. The Ninth District's misinterpretation and misapplication of the applicable law pertaining to both the prejudicial effect of jury instructions and the proper manner to object to a jury charge pursuant to Civ. R. 51 are of such public and great general interest throughout **all** of Ohio that warrants this Court's reconsideration of its denial of jurisdiction over Proposition of Law No. II.

It is Defendants' intention to seek reconsideration in order to bring to the attention of all Justices of this Court the substantial public and general interest as one other Justice has already acknowledged. Reconsideration should be granted and jurisdiction over both Propositions of Law Nos. I and No. II should be accepted. Permitting the Ninth District's Decision to stand will inevitably perpetuate the contradictory and inconsistent application of the law pertaining to the prejudicial effect of a jury charge and the proper manner to object and preserve objection to a particular jury instruction throughout Ohio. Ohio courts and litigants alike deserve fair, consistent and predictable application of the law through this Court's guidance.

BRIEF IN SUPPORT

Proposition of Law No. II: The Ninth District's Decision Disallowing The Remote Cause Jury Instruction has Effectively Eliminated the Manner In Which Objections Must Be Made And Preserved Pursuant to Civ.R. 51 And In Doing So, The Ninth District Has Created New Law And Has Also Created An Intradistrict Conflict Within The Ninth District Court Of Appeals

[2] This Court correctly accepted Defendants' Proposition of Law No. I pertaining to the lack of any prejudicial effect of the remote cause jury instruction.

Of importance, the Ninth District completely failed to address its own case of *Van Scyoc vs. Huba*, 9th Dist. No. 22637, 2005-Ohio-6322 in which the Ninth District explicitly held that where a party fails to renew an objection to a jury instruction where the trial court specifically provided the party the opportunity to renew the objection, the party has effectively withdrawn the objection. The Ninth District ignored its own Decision in *Van Scyoc* even though Ms. Hayward admitted in her briefing before the Ninth District that the *Van Scyoc* case was directly on point with this case:

> But Appellees [Summa] cite Van Scyoc v. Huba, 9th Dist. No. 22637, 2005-Ohio-6322, for the proposition that Appellant's failure to renew her objection after the jury was charged withdrew the objection. **Theresa has not been able to harmonize Van Scyoc with Presley, Wolons, and Callahan.** There is no indication in Presley, Wolons, or Callahan that the parties renewed their objections after the jury was charged. It appears that if Van Scyoc was the law, Presley, Wolons, and Callahan would not have turned out the way those cases did. It also does not appear that Van Scyoc has been cited for this proposition since it was decided. **Judging by the dissent in Callahan, it appears that there may be divergent views on this issue between the judges of the Ninth District. Perhaps this panel can resolve whether Callahan or Van Scyoc will be the law in this district going forward.**

(Ms. Hayward's Reply Brief, pg. 11) (Emphasis Added).

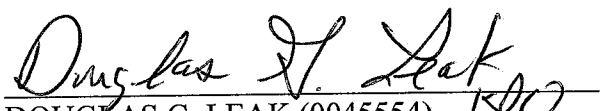
Although Ms. Hayward recognized a conflict within the Ninth District and even requested the Ninth District to resolve the conflict, the Ninth District sidestepped the objection issue altogether. So, the Ninth District has effectively created an intradistrict conflict that will inevitably lead to confusion throughout all of Ohio..

Despite Summa's heavy reliance upon the *Van Scyoc* Decision and Ms. Hayward's specific request for the Ninth District to resolve the intradistrict conflict, the Ninth District neither addressed the *Van Scyoc* Decision nor acknowledged Ms. Hayward's request for a

resolution of the intradistrict conflict. Left unresolved, the Ninth District has conflicting Decisions with respect to the manner in which to object and preserve an objection to a jury instruction pursuant to Civ.R. 51. Consequently, the Ninth District has created conflicting law that will inevitably cause confusion throughout all of Ohio with respect to Civ.R. 51.

Basically, the Ninth District has eliminated the proper manner under Civ.R. 51 in which to object and preserve objections to jury instructions. Such an elimination of the requirements of Civ.R. 51 is of public and great general concern. Therefore, this Court should reconsider its denial of jurisdiction over Proposition of Law No. II and then accept jurisdiction in order to clarify the requirements of Civ.R. 51 so three is no confusion throughout Ohio.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing was served on April 8, 2013 pursuant to Civ.R. 5(B)(2)(c) by mailing it by United States mail to:

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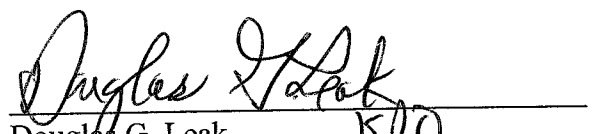

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