ORIGINAL

IN THE SUPREME COURT OF OHIO

YOLANDA CANTU, etc.,	*	Case No. 2013-0472
Appellee,	*	Court of Appeals Case No. 11FU18
v.	*	Trial Court Case No. 08 CV 135
IRONDALE INDUSTRIAL CONTRACTORS, INC., et al.,	*	
	*	
Appellant.	*	

APPELLEE YOLANDA CANTU'S MEMORANDUM IN RESPONSE TO APPELLANT IRONDALE INDUSTRIAL CONTRACTORS, INC.'S MOTION FOR RECONSIDERATION

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MEMORANDUM IN RESPONSE

Now comes the Appellee, Yolanda Cantu, by and through counsel, and respectfully enters her response to Appellant Irondale Industrial Contractors, Inc.'s *Motion for Reconsideration*. This Court properly declined discretionary jurisdiction in its June 19, 2013 entry as the case is not of public or great interest. The first proposition of law sought by the Appellant is already the law. It ought not to be within the province of this Court to accept a matter under the designation of public or great interest to address a legal proposition which is already the law. Redundancy and inefficiency aside, this Court has clearly and recently analyzed the constitutionality, intent, and meaning of the R.C. § 2745.01, *et seq.*, and its various subparts and terms.

The facts of the present case fall under R.C. § 2745.01(A) and (B). This Court very recently analyzed those subparts in *Houdek v. ThyssenKrupp Materials N.A.*, Inc. 134 Ohio St.3d 491 (2012). The Sixth Appellate District expressly relied on that analysis in its decision below, including a discussion of "specific intent" which this Court mandated. Accordingly, the first proposition of law cannot be of public or great interest *again* as it was just heard and established by this Court.

Appellant's second proposition of law is more to the point of its motives. Appellant is seeking an additional review of the facts in the case because it disagrees with the Sixth District's analysis. It cannot be a proper exercise of discretionary jurisdiction to affix the designation "of public or great interest" to a matter which is truly of great interest to one litigant alone.

The Sixth District did not hold that the statutory standard is the same as the common law standard as the Appellant asserted at p. 1 of its *Motion for Reconsideration*.

The Sixth District applied the narrow standard articulated only months before by this Court in *Houdek* and its predecessors. There is a difference between narrowing a standard and abrogating a class of claims. By enacting R.C. § 2745.01, the General Assembly did the former and not the latter. The reality must exist, then, that where the General Assembly creates a statutory claim there will be viable claims. Here, this case is only at the summary judgment stage; a procedural test of the evidence. The Sixth District found that, under the standard recently outline by this Court, Appellee's case may proceed forward. Such a decision is hardly of public or great interest.

Appellant, in an effort to bolster its position, omitted an important part of the Sixth District's recitation of the law and its analysis in the long block quote from the lower *Cantu* decision on pp. 3-4 of its motion for reconsideration. The omitted language, of course, undermines Appellant's argument that the Sixth District has returned to the old, common law standard for intentional torts:

> Subsequent to the submission of this matter for decision, the Supreme Court of Ohio released another opinion concerning the application of R.C. 2745.01. In *Houdek v. ThyssenKrupp Materials N.A*, the court rejected the characterization of the Eight District Court of Appeals that R.C. 2745.01(B) was a "scrivener's error."
>
> The court defined "deliberate intent" as "specific intent," id, a term ordinarily used in criminal law meaning "[a] subjective desire or knowledge that the prohibited result will occur." Black's Law Dictionary 1399 (6th Ed. 1990), quoting *People v. Owens*, 131 Mich.App. 76, 85, 345 N.W.2d 904 (1983). *Cantu v. Irondale Indus. Contrs.*, 2012 Ohio 6057, P25-P26 (6th Dis. 2012).

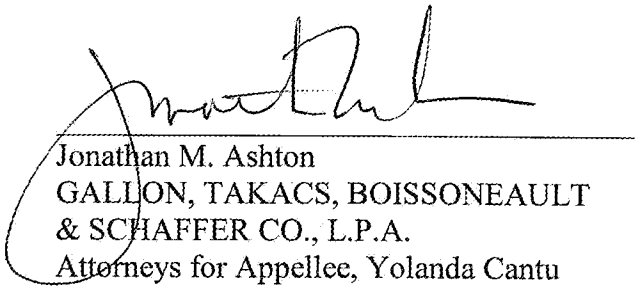
Clearly, the Sixth District did not apply the common law standard and any contention to the contrary is nothing more than an attempt by the Appellee to convince this Court to review the below decision. There is no proposition of law nor is there any aspect of this case which presents a matter of public or great interest.

CONCLUSION

For the reasons discussed above, this case involves neither matters of public or great interest nor does it concern a constitutional question or a conflict amongst the district courts of appeal. The Appellee, Yolanda Cantu, respectfully requests that this Court once again decline jurisdiction.

Respectfully submitted,

Kevin J. Boissoneault, *Counsel of Record*



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CERTIFICATE OF SERVICE

I certify that a copy of this *Memorandum In Response to Appellant Irondale Industrial Contractors, Inc.'s Motion for Reconsideration* was sent by ordinary U.S. mail to on July 3rd, 2013.

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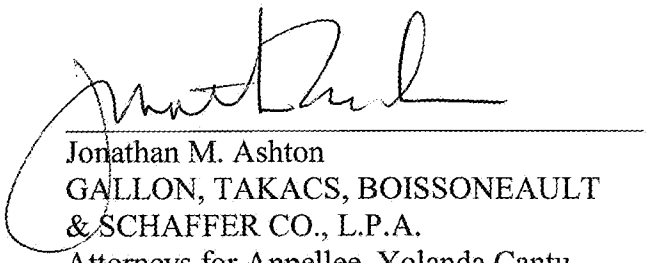

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