

ORIGINAL

14-15112 [March 20, 2014] [AMR/rs]

IN THE SUPREME COURT OF OHIO

INFINITE SECURITY SOLUTIONS,)
LLC, et al.)
)
Appellee,)
)
vs.)
)
KARAM PROPERTIES I, LTD., et al.)
)
Appellant.)

Cases Nos. 2013-1671 and 2013-1795

On Appeal from the Lucas County Court
of Appeals, Sixth Appellate District

AMICUS CURIAE BRIEF OF THE OHIO ASSOCIATION OF CIVIL TRIAL
ATTORNEYS IN SUPPORT OF THE PROPOSITION OF LAW ASSERTED BY
APPELLANT THE TRAVELERS INDEMNITY COMPANY

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I. INTRODUCTION

This case asks the Court to decide whether a trial court retains jurisdiction to enforce a settlement where it has entered a Dismissal Entry which does not contain the terms of the settlement agreement or expressly reserve jurisdiction. This Court's decision on the issue will impact the procedure of all trial courts and the behavior of parties during settlement negotiations. It is the Ohio Association of Civil Trial Attorneys' (OACTA's) position the Court should adopt the position of the Fifth, Eighth and Eleventh Appellate Districts as discussed below, otherwise settlements will be discouraged, judicial resources will be unnecessarily expended, and settlement confidentiality will be hindered. OACTA submits this Amicus Brief in support of the Proposition of Law discussed below as it is in line with the Fifth, Eighth, and Eleventh Appellate Districts' case law and further promotes settlements and judicial efficiency.

OACTA is an organization of attorneys, corporate executives, and managers who devote a substantial portion of their time to defense of civil law suits and the management of claims against individuals, corporations, and government entities. For almost fifty years, OACTA's mission has been to provide a forum where these individuals and entities can work together and with others on common problems and promote and improve the administration of justice in Ohio. OACTA submits Amicus briefs in cases which will impact important issues in the legal field. OACTA considers this Proposition of Law important as it will impact negotiation strategy, enforceability of pending settlements, willingness to enter into settlement agreements, and court procedure for all involved parties, including Plaintiffs, Defendants, and Courts.

As such, OACTA submits this Amicus Curiae brief to the Ohio Supreme Court urging this Honorable Court to adopt the Proposition of Law in accordance with the perspective of the Fifth, Eighth, and Eleventh Appellate Districts of Ohio.

II. STATEMENT OF FACTS

OACTA adopts and will refer to herein the Statement of Facts as set forth in the merit brief of Appellant The Travelers Indemnity Company (Travelers). For the Court's reference, a brief summary of the statement of the case is as follows:

This case stems from a fire loss which took place on July 4, 2008. As a result of a dispute surrounding liability for the property damage, two suits were filed which were eventually consolidated. On May 18, 2011, all parties went through an unsuccessful mediation with Judge McQuade. A final settlement conference was held on May 19, 2011 during which the parties agreed to an oral settlement where Infinite Security Solutions (Infinite) offered a lump sum in settlement. Karam Properties I and II (Karam), and Travelers were to determine disbursement of the lump sum among their claims. At the final settlement conference, the parties stated if they could not determine disbursement or priority of their competing claims, that issue would be submitted to the trial court. The Court then journalized an entry on May 26, 2011 which stated the parties represented they resolved their differences, dismissed the case without prejudice, and gave the parties a right to file an Entry of Dismissal within thirty (30) days of the order.

After this Order was journalized, Travelers and Karam could not resolve how to disburse the settlement funds from Infinite. Travelers and Karam returned to the Court regarding apportionment of the funds. Infinite moved to support to enforce the settlement. The trial court decided the disbursement of the funds and ordered the settlement to be split as such. Appellant Karam appealed this judgment and the Sixth Appellate District concluded the aforementioned settlement Entry was unconditional and divested Lucas County Court of Common Pleas of jurisdiction. As this decision was in conflict with decisions in the Eighth and Eleventh Districts, this Honorable Supreme Court of Ohio agreed to hear this case on certified conflict and jurisdictional grounds.

III. LEGAL ARGUMENT

Proposition of Law: A trial court's entry of dismissal that (1) states the parties have resolved their differences or have arrived at a settlement agreement, (2) states that the dismissal is without prejudice, (3) permits the submission by the parties of a final entry of dismissal, and that (4) provides a time-frame for the filing of any final entry of dismissal, is a conditional dismissal that does not divest the trial court of jurisdiction to consider and enforce the terms of the settlement agreement.

The Court is asked to decide whether a settlement order which neither sets forth the terms of a Settlement Agreement, nor reserves the exclusive right to jurisdiction is a conditional or unconditional dismissal order. The Proposition of Law espoused creates a conditional order because the language of the order establishes the dismissal was conditional upon the settlement, a dismissal without prejudice does not eliminate the trial court's jurisdiction, and a time period for submitting a final order, as set forth in the present case, anticipates future action and implies continued jurisdiction. This logic is most applicable and most natural as it is in line with public policy and case law from the Fifth, Eighth, and Eleventh Appellate Districts. The cases in the Fifth, Eighth, and Eleventh Districts properly determined agreements analogous to the Proposition of Law are conditional based on the mere existence of a Settlement Agreement and as such the trial court therefore retains jurisdiction to enforce the Settlement Agreement. See *Estate of Berger v. Riddle*, 8th Dist. Nos. 66195, 66200, 1994 WL 449397, *3 (August 18, 1994); *Marshall v. Beach*, 143 Ohio App. 3d 432, 436, 758 N.E. 2d 247 (11th Dist. 2001), and *State ex rel. Spies v. Lent*, 5th Dist. No. 2008 AP 05 0033, 2009-Ohio-3844, ¶¶ 46, 47. As discussed below, these Appellate Districts set forth the correct interpretation of such dismissal orders as this interpretation allows for the (1) application of the plain language of the Court's settlement order, (2) allows trial courts to retain jurisdiction over unresolved matters between settlements of parties, and (3) encourages settlements and judicial efficiency in line with the public policy of this state.

1. The Law of the Fifth, Eighth, and Eleventh Districts is in Conflict with the Law of the Second, Seventh, Ninth, and Sixth Appellate Districts as it Pertains to Language Required in a Dismissal Order for it to be Considered Conditional.

Though the Appellate Districts are split on what can be considered a conditional dismissal order, it is largely settled a trial court can enforce a Settlement Agreement among the parties. *Mack v. Polson Rubber Co.*, 14 Ohio St. 3d 34, 36, 470 N.E. 2d 902, 903 (1984). The bright line limitation on a trial court's jurisdiction over a case is the occurrence of an unconditional dismissal. *State ex rel. Rice v. McGrath*, 62 Ohio St. 3d 70, 71, 577 N.E. 2d 1100 (1991). The logical inverse of this notion, wherein conditional dismissals do not deprive the trial court of jurisdiction, is also settled. *The Estate of Berger v. Riddle, supra*.

The split districts' dispute surrounds the phrasing required to make a Dismissal Entry conditional. One group of districts holds to a very strict standard which requires a blatant statement of the settlement or a meticulous reservation of the jurisdiction of the trial court, while the Fifth, Eighth, and Eleventh Districts engage in a more natural interpretation and analysis of the settlement as a condition precedent to the finality of a dismissal. See *Grace v. Howell*, Second Dist. No. 20283, 2004-Ohio-4120; *Bugeja v. Luzik*, Seventh Dist. No. 06 MA 50, 2007-Ohio-733; *Davis v. Jackson*, 159 Ohio App. 3d 346, 2004-Ohio-6735, 823 N.E. 2d 941; R. (Court of Appeals) 23 at p. 10); *Estate of Berger v. Riddle, supra*; *Marshall v. Beach, supra*, and *State ex rel Spies v. Lent, supra*.

2. The Plain Meaning of Such Dismissal Orders Obviates the Conclusion They are Conditional, as They Contain Language stating a Settlement has Occurred, Without Prejudice, and Contemplate Future Action Making the Dismissal Conditional Upon the Occurrence of the Settlement Itself.

The interpretation of the Fifth, Eighth, and Eleventh Districts should be adopted because a Dismissal Entry in line with the Proposition of Law is in essence conditional based upon the plain

meaning of the language in the Entry. In common parlance, as well in other areas of the law, the term conditional is straightforwardly defined as a state of affairs, expressed or implied, which must be met in order for another state of affairs to occur. See *Lauer v. Equitable Life Assur. Soc.*, 8 Ohio N.P. 117, 10 Ohio Dec. 397, 1900 WL 2320 (Super. Ct. 1900). The most natural definition of a conditional Dismissal Entry based on a settlement would be one which ultimately required little more than the acknowledgement of said settlement and the reliance of the trial court on that settlement in order to dismiss.

Applicably, the Eleventh District has found that simply joining the settlement and dismissal in the same sentence is sufficient to create a conditional dismissal. *Hines v. Zofko*, 11th Dist. No. 93-T-4928, 1994 WL 117110. As the Court explained in *Hines*:

The judgment entry which dismissed the instant case stated: "case settled and dismissed." It did not merely state the case was dismissed. Thus the dismissal was conditioned upon the settlement of the case. When the settlement was not performed, the condition upon which the action was dismissed failed, and the trial court retained authority to proceed in the action.

Id. Using a straightforward analysis, the Eleventh District concluded without the settlement, the dismissal would not have occurred, thereby making it conditional upon the settlement. Therefore, it is not necessary for a dismissal entry conditioned upon a settlement to contain the exact terms of that settlement agreement, but merely that such settlement exists.

The interpretation of the Fifth, Eighth, and Eleventh Districts, allows for the application of the plain language of a dismissal entry. The standard presented by the other districts needlessly overcomplicates the issue of conditions precedent. Further, requiring the trial court to disclose the contents of the settlement, thereby violating the desire for confidentiality, or to, in every case, necessitate explicitly reserving jurisdiction would discourage settlements and create inefficiency.

The Settlement Entry in the present case is exactly one of those dismissal entries conditioned upon a settlement. The trial court below stated in its entry:

“Parties having represented to the Court that their differences have been resolved, this case is dismissed without prejudice, with the parties reserving the right to file an entry of dismissal within thirty (30) days of this order.”

The first clause of that sentence is the requisite condition upon which the entry is premised. The trial court, plainly, sets the two parties agreeing to resolve their differences as the prerequisite or condition to the finality of the dismissal entry. The plain language of this entry also allows for future action, with the Court setting thirty (30) days during which the parties may file an entry of dismissal.

This contemplates additional action by the parties as well as retains jurisdiction. To interpret this dismissal or others following the Proposition of Law any other way, would be to ignore the plain language, if not intent, of the relevant dismissal entry, resulting in confusion and over complication of a standard practice of many trial courts.

Setting aside the policy issues which plague the position taken by the small majority of districts, the spelling out of the Settlement Agreement in the trial court’s Entry does not make that settlement any more of a condition precedent. Therefore, a settlement upon which the parties agree needs only be acknowledged, not explicitly spelled out, in order to qualify as a condition on which a dismissal entry hinges.

3. A Dismissal Order Conditioned Upon the Settlement Agreement Between Parties Allows the Trial Court to Retain Jurisdiction Over Unresolved Matters and Allows the Trial Court to Enforce These Settlement Agreements.

The Sixth District determined in the present case the dismissal without prejudice eliminated the trial court’s jurisdiction over the action. Citing to secondary sources, the Court held “*dismissal without prejudice relieves the trial court of all jurisdiction over the matter, and the action is treated as though it had never been commenced.* (Emphasis added).” *Infinite Sec. Solutions, LLC v. Karam*

Properties I, LTD, 2013-Ohio-4415 *motion to certify allowed*, 2014-Ohio-176, 137 Ohio St. 3d 1471 and *appeal allowed*, 2014 Ohio-176, 137 Ohio St. 3d 1473, *citing* 1 Ohio Jurisprudence 3d, Actions, § 170 (2013). However, the Sixth District ignores the established and persuasive two step dismissal established in *Hill v. Briggs*, 111 Ohio App. 3d 405, 676 N.E. 2d 547 (10th Dist. 1996). The two step dismissal procedure in *Hill* consists of (1) a conditional dismissal without prejudice followed by (2) an unconditional dismissal with prejudice which serves as the final dismissal. See *Id.*

The *Hill* two step dismissal allows for the trial court to retain jurisdiction until the final dismissal order is entered and allows the trial court to anticipate future action. In keeping with the previously mentioned decisions, the jurisdiction of the trial court is terminated at the entry of the second, unconditional and final dismissal with prejudice. *State ex rel Rice v. McGrath*, 62 Ohio St. 3d 70, 71, 577 N.E. 2d 1100 (1991). In accordance with *Hill*, the aforementioned decisions of the Fifth, Eighth, and Eleventh Districts, and the espoused Proposition of Law, the jurisdiction of the trial court is not terminated in the event of a conditional dismissal where future action is anticipated.

The trial Court in this case openly addressed a future action, and a future state of affairs in its Entry which were conditioned on the settlement between the parties. Entries following the Proposition of Law would do the same. While the trial court retains jurisdiction, the Court anticipates the parties will engage in a future action, namely, the filing of the entry of dismissal with prejudice. However, should the settlement, upon which the *Hill* two step is conditioned, not occur, then the final dismissal entry cannot be filed and the case remains within the jurisdiction of the trial court.

In sum, the totality of the Entry, where it contains reference to a settlement, a dismissal without prejudice, an anticipation of future action, and a timeline for that future action, creates an unambiguous, conditional dismissal entry with the settlement as the condition precedent.

Even if this Court were to consider such language to be ambiguous, the standard adopted by the small majority of districts regarding the amount of information needed in a settlement entry in order for it to be conditional, also fails if such an entry is deemed ambiguous. In the face of ambiguity, the Appellate Court may look to the record to determine the trial court's intent. This Court, as well as a number of other districts, have found the "reviewing court must examine the entire journal entry and the proceedings" when necessary. *Joyce v. General Motors Corp.*, 49 Ohio St. 3d 93, 93, 551 N.E. 2d 172, 172 (1990); See *Lurz v. Lurz*, 8th Dist. No. 93175, 2010-Ohio-910, ¶ 17; *Hofer v. Hofer*, 93 Ohio Law. Abs. 486, 42 N.E. 2d 165 (9th Dist. 1940), quoting 34 Corpus Juris, Judgments § 794. As such, if this Court would consider settlement entries under the Proposition of Law to be ambiguous, it only need look to the proceedings of the trial court and the intent of the trial court. This only supports the assertion the trial court is in the best position to enforce and litigate settlements on which dismissals are conditioned and it is the intent of the trial court and the language of the entry which show the conditional dismissal of a case based on the settlement of the parties.

In light of this breadth of jurisprudence and the public policy concerns discussed in the next section, those Districts which find a dismissal entry requires a dramatic amount of information published in an entry and reserve jurisdiction to become conditional are incorrect and the requirements are cumbersome.

4. This Court Should Adopt the Above Cited Proposition of Law in Accordance with the Fifth, Eighth, and Eleventh Appellate Districts as it Promotes Settlement Among Parties, Protects the Confidentiality of Settlement Agreements, and Best Serves Judicial Efficiency and Economy.

It has long been held in Ohio settlements are highly favored, and will be encouraged and upheld. See *State ex rel. Wright v. Weyandt*, 50 Ohio St. 2d 194, 363 N.E. 2d 1387 (1997); *Spercel*

v. Sterling Industries, Inc., 31 Ohio St. 2d 36, 285 N.E. 2d 324 (1972), *cert. denied*, 411 U.S. 917, 93 S. Ct. 1550, 36 L. Ed. 2d 309 (1973); *Krischbaum v. Dillon*, 58 Ohio St. 3d 58, 69-70, 567 N.E. 2d 1291, 1302 (1991). As such, “a trial judge is given considerable discretion to promote settlement among the parties.” *Bland v. Graves*, 99 Ohio App. 3d 123, 136, 650 N.E. 2d 117, 126 (9th Dist. 1994); citing *Ohio Med. Professional Liability Underwriting Association v. Physicians Ins. Co. of Ohio*, 27 Ohio App. 3d 23, 24, 27 OBR 24, 25-26, 499 N.E. 2d 347, 348 (10th Dist. 1985). As noted by the Supreme Court of Ohio, “given the explosion of litigation so characteristic of the modern era, it is essential that the settlement of litigation be facilitated, not impeded. So long as there is no evidence of collusion, in bad faith, to the detriment of other, non-settling parties, the settlement of litigation will be encouraged and upheld.” *Krischbaum, supra* at 69-70.

The Proposition of Law as espoused above will promote settlements, not impede them. If this Court were to adopt the more stringent approach of Second, Seventh, Ninth, and now Sixth Districts, parties would be forced to disclose the terms of their Settlement Agreement on the actual judgment entry, which is against the wishes of most parties for their settlements to remain confidential. Further, parties would be discouraged from settling not only from a confidentiality standpoint but from an enforceability standpoint. As espoused above, Settlement Agreements are enforceable and are upheld. If the trial court is divested of jurisdiction to enforce a settlement on which its dismissal was conditioned, the policy of the state is undermined. Additionally, when parties make an informal agreement to settle at a mediation, settlement conference, through internal negotiations, or at a court hearing, the parties will be forced to analyze and litigate all potential aspects of the Settlement Agreement to be incorporated within the language of a judgment entry to ensure a settlement is conditional rather than agreeing to settle and working on the specific terms before a final entry is executed.

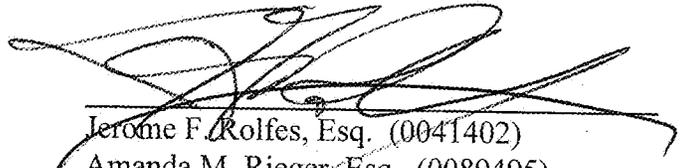
Adopting the position of the Fifth, Eighth, and Eleventh Districts will also promote judicial efficiency and economy. Allowing the Court to note on its docket when the parties have agreed to settle, conditioning that dismissal upon said settlement, and retaining the jurisdiction to enforce that settlement will operate to allow the trial court to litigate and resolve any settlement issues quickly and efficiently. To adopt any other Proposition of Law, specifically those in line with the Second, Seventh, Ninth, and now Sixth Districts would conceivably mean in order to enforce settlements, a completely separate Court or Courts and Judge or Judges would become involved for a settlement to occur and be consummated. Further, it will overcomplicate the issue of a basic entry filed by the Court which allows the parties additional time to file a final entry, by forcing the trial court to use specific language and note all terms of the Settlement Agreement accurately instead of simply noting a settlement has occurred. Further, a trial court should be allowed to resolve and promote settlement of cases of which it has the best and/or personal knowledge. Often, the trial judge will have a hand in the promotion of the relevant settlements and will be able to effectively communicate with the parties and their counsel to bring the case to a final resolution. To adopt any other Proposition of Law would drastically prolong litigation, as it has here, and keep otherwise resolved cases upon the Court's docket.

IV. CONCLUSION

In accordance with the above case law as well as the principles of settlement promotion and judicial economy well supported by Ohio law and this Court, the Ohio Association of Civil Trial Attorneys respectfully asks this Court adopt the Proposition of Law which states a trial court's entry of dismissal that (1) states the parties have resolved their differences or have arrived at a Settlement Agreement, (2) states that the dismissal is without prejudice, (3) permits the submission by the parties of a final entry of dismissal, and (4) provides a timeframe for the filing of any entry of

dismissal, is a conditional dismissal that does not divest the trial court of jurisdiction to consider and enforce the terms of the Settlement Agreement. This Proposition will advance the interests of Plaintiffs, Defendants, and Courts alike as it promotes expediency and applies the plain meaning of such settlement entries.

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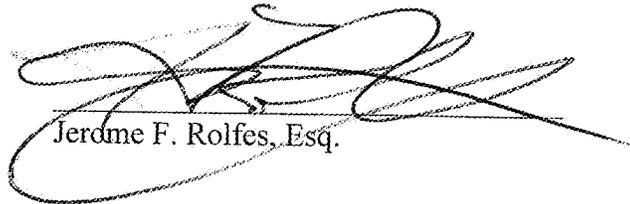
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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Amicus Curiae Brief of the Ohio Association of Civil Trial Attorneys in Support of the Proposition of Law Asserted by Appellant The Travelers Indemnity Company was served by regular U.S. Mail this 20th day of March, 2014 upon the following:

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