

IN THE SUPREME COURT OF OHIO

14-0649

DONALD TEMPLEMAN, Executor of
the Estate of WILLOW TEMPLEMAN,
Deceased,

Plaintiff-Appellee,

vs.

KINDRED HEALTHCARE, INC.;;
and
KINDRED HEALTHCARE OPERATING,
INC.;;
and
KINDRED NURSING CENTERS EAST,
LLC;;
and
GREENS NURSING AND ASSISTED
LIVING, LLC;;
and
RAJESH AGARWAL, M.D.;;
and
RAJESH AGARWAL, M.D., LLC;;
and
MONIQUE HARRIS;;
and
ANITA RENEE SUTTON;;
and
SUSAN GAY SHEPARD;;
and
BEANNE CLIPPER;;
and
SHELLY SZAREK-SKODNY,

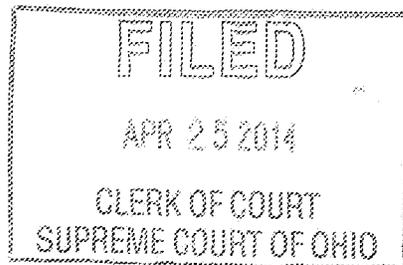
Defendants-Appellants.

Supreme Court No. _____

Appellate Court No. CA-14-101028

Trial Court No. CV-12-792299

On Appeal from the Court of Appeals
of Ohio, Eighth Appellate District,
County of Cuyahoga



MEMORANDUM IN SUPPORT OF JURISDICTION ON BEHALF OF DEFENDANT-
APPELLANTS, KINDRED HEALTHCARE, INC., KINDRED HEALTHCARE
OPERATING, INC., KINDRED NURSING CENTERS, EAST, LLC, GREENS NURSING
AND ASSISTED LIVING, LLC, MONIQUE HARRIS, ANITA RENEE SUTTON, SUSAN
GAY SHEPARD, BEANNE CLIPPER, AND SHELLY SZAREK-SKODNY

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**EXPLANATION OF WHY THIS CASE PRESENTS A MATTER
OF PUBLIC AND GREAT GENERAL INTEREST**

The concept of logical progression is inherent in virtually every aspect of our society and the laws that govern it. It provides a foundation for the manner in which we educate, medicate, and adjudicate. It instills a sense of order and temperance into processes that may otherwise be susceptible to exploitation. Nowhere is logical progression more prominent than in our judicial system. Its influence is evident in the structure of our courts, the requirements for jurisdiction, and the manner in which laws are administered. For example, it is the concept of logical progression that requires certain claimants to exhaust all available administrative remedies before seeking judicial relief. Coincidentally, it is also the reason why the Defendants in this matter were forced to first seek review from the Court of Appeals, before petitioning this Court for redress. As further explained below, this case presents a matter of public or great general interest that arises specifically as a result of the trial court's failure to apply a recognized form of logical progression, known as the "apex doctrine," in the administration of discovery.

Regrettably, respectfulness and courtesy, the cornerstone characteristics of civility, seem to be far less prevalent in professional circles than they once were. They have become the exception, rather than the expected. The practice of law has not proven itself immune to this unsettling change. Unscrupulous and over-zealous litigants often attempt to utilize the tools of discovery as a means to harass, oppress, inconvenience, or deplete opponents to no legitimate end. Through creative pleading, the use of broad-stroked claims, and unsubstantiated demands for exemplary damages against parent companies and corporate affiliates, opportunities are

increasingly arising (or being manufactured) for parties in litigation to depose “apex officials.”¹

By virtue of their positions (as opposed to their actual knowledge), apex officials are particularly vulnerable to abusive discovery practices. See *Mulvey v. Chrysler Corp.*, 106 F.R.D. 364 (D.C. R.I.1985) (reiterating that virtually every court that has addressed the issue of apex level deposition notices has observed that discovery of this nature creates a tremendous potential for abuse and harassment). Given the fact that most apex officials are well removed from the day-to-day, ground level operations of any given company, organization, or governmental department, they typically lack the unique, first-hand knowledge that would make them necessary witnesses to pending litigation. Nevertheless, their stature and essential role in the highest level of corporate enterprise exposes apex officials to often unnecessary and predatory discovery practices, where the purpose is less about gathering critical case information and more about using the discovery process as a means of gaining leverage over a party opponent.

The law has traditionally taken measures to protect those who, by mere virtue of their condition, status, or stature, are at an increased risk of abuse or injury. This is particularly true in instances where the legal process is susceptible to exploitation or used for deleterious purposes. In an increasingly litigious society, where facially benign tools reserved for discovery are often set to use for spurious and misbegotten purposes, concerns have arisen regarding their abuse. There is growing jurisprudential

¹ This term includes, but is not limited to, chief executive officers, chief operating officers, chief financial officers, presidents, executive vice presidents, board members, and other high ranking officers.

recognition of the fact that apex officials are “singularly unique and important individual[s], who can be easily subjected to unwarranted harassment and abuse. [T]he[y] ha[ve] the right to be protected and the courts have a duty to recognize [their] vulnerability.” *Mulvey*, 106 F.R.D. at 366.

In response, many courts have adopted or implemented a framework, constructed upon principles of logical progression, which provides a limited degree of protection to high level executives and corporate/organizational officers (“apex officials”). The doctrine is designed to prevent abusive depositions of apex officials by requiring the requesting party to demonstrate that the executives to be deposed have unique or superior first-hand knowledge of the facts at issue in the case and that other less burdensome avenues of obtaining the information sought have been exhausted. It focuses on three essential criteria: (1) the nature of the knowledge possessed by the putative deponent; (2) the burden that the requested deposition will impose on the putative deponent; and (3) the availability of less intrusive means of obtaining the information sought. The use of this logical framework by courts in determining whether the depositions of apex officials are warranted has come to be known more commonly as the “apex doctrine.”

The apex doctrine recognizes that even the well-intentioned discovery process can, at some point, cease serving as a social benefit and quickly becomes a “social cost.” *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 741 (1975). It is in this acknowledgement that the apex doctrine finds its roots. *Salter v. Upjohn*, 593 F.2d 649 (5th Cir. 1979), is one of the seminal cases that addressed this important discovery issue. Therein, the plaintiff, in her capacity as executrix of her late husband’s estate,

brought a wrongful death action against the corporate manufacturer of one of the Decedent's medications. The trial court issued a protective order vacating plaintiff's first notice to take the deposition of the corporate defendant's president, requiring that the plaintiff first depose other Upjohn employees, who, according to the defendant, had more knowledge of facts, before deposing the corporate president. On appeal, the Fifth Circuit Court of Appeals affirmed. Since then, courts from across the nation have slowly taken notice of the issue and employed a similar logical progression in the way they approach demands for the depositions of apex officials.

The apex doctrine is certainly not intended to be an impediment to meaningful or necessary discovery. Nor is it intended to serve as a prohibition against the depositions of apex officials. To the contrary, the doctrine openly encourages the depositions of such high ranking officials, when warranted, by requiring that discovery be conducted in a reasonable and systematic manner. The doctrine represents a balancing of costs. It eliminates unnecessary intrusiveness, burden, and incredible expense by ensuring that appropriate measures have been taken to establish the need for certain discovery depositions before they are undertaken. The apex doctrine further reduces discovery disputes, such as the one that gives rise to this appeal, by placing litigants on notice of the need to engage the process of discovery in a logically progressive manner.

Corporations of all types and sizes, both domestic and foreign alike, have a keen interest in the issue presented by this appeal. They, who conduct business within the State of Ohio, need to be reassured that their top executives will not be subject to undue distraction, inconvenience, or burden at the whimsy of litigants, simply because they are amenable to suit. Likewise, the many citizens of Ohio, who benefit either

directly or indirectly from corporate investment, share an interest in seeing that our State continues to encourage economic growth and development, of which corporations are an integral part.² The primary responsibility for promoting economic growth befalls our government. This is accomplished primarily through the implementation and enforcement of laws and sound policies, which serve to enhance understanding and encourage participation in commerce that is essential to the private and public sectors. The apex doctrine serves all such purposes.

The burgeoning body of law supporting the adoption of the apex doctrine is persuasive. A review of available case law reveals that the Ohio Supreme Court has not expressly considered the applicability of this important doctrine under existing state law and its role in augmenting Civil Rule 26. Adoption of the apex doctrine would lend conformity to the general discovery principles that can often be applied in disparate fashion and inform judges, attorneys, and litigants alike as to the expectations for discovery of this nature.

The trial court's decision below, which implicitly rejected the fundamental principles underlying the apex doctrine and allowed Plaintiff to begin his quest for relevant information with the CEO of the primary Defendant's parent corporation is of vital importance – not so much due to the fact that these apex officials will be forced to testify in this case, but because of the dangerous precedential impact that the court's ruling could have on Kindred and a myriad other business entities who exist or transact business within Ohio's borders. This appeal stands to address the potential error and

² Corporate investment is undeniably critical to Ohio's ongoing prosperity and its ability to provide essential functions and services for those who reside within the State's borders.

inevitable ambiguity raised by the trial court's ruling and to reaffirm this State's commitment to the fair administration of laws and the logical progression of their administration.

Corporations who exist or transact business under the laws of Ohio are entitled to the assurance of consistency in the manner in which they will be impacted by over-zealous litigants. Jurists, attorneys, and litigants alike also stand to benefit from the adoption of a clear standard that will govern the management of demands for discovery involving apex officials. Although less directly, the various governmental departments, employees, and the many residents of this State, all of whom benefit from corporate investment and activity in Ohio, possess an interest in seeing that this issue is resolved in a manner that does not limit the rights of those pursuing claims through Ohio's judicial system, but ensures that their right to do so will not be utilized in a manner that is illogical, spurious, or unnecessarily detrimental.

Given the implications of the trial court's decision and the precedent that it stands to set for future cases involving these named Defendants (as well as their various subsidiaries, affiliates, and any number of other uninvolved corporate entities), Defendant-Appellants are left with no choice but to seek review of this important issue at present, lest their opportunity to do so be lost. It is in this context that Defendant-Appellants bring their search for clarification and redress to this honorable Court. Because the instant appeal presents a matter of public and great general interest, Defendant-Appellants respectfully invite this Court to either remand the matter to Eighth District Court of Appeals with instructions for that court to address the foregoing issues,

which they have to date declined to do, or exercise jurisdiction over the matter, pursuant to Article IV, Section 2(B)(2)(e) of the Ohio Constitution.

STATEMENT OF THE CASE

I. The Parties

Plaintiff-Appellee is the son of Willow Templeman. Ms. Templeman, now deceased, was a resident at The Greens Nursing and Assisted Living, LLC d/b/a Kindred Transitional Care and Rehabilitation-The Greens ("The Greens"), an extended, transitional, and rehabilitation care facility located in Lyndhurst, Ohio. The instant action is one involving claims of medical negligence and wrongful death arising out of care and treatment provided to Ms. Templeman during her stay at The Greens. With the exception of Rajesh Agarwal, M.D., each of the other individually named Defendants is or was an employee of The Greens. In addition to The Greens, Plaintiff-Appellee has asserted claims against several other corporate entities, which are alleged to be either corporate parents or affiliates of the Greens, including Kindred Nursing Centers, East, LLC, Kindred Healthcare Operating, Inc., and Kindred Healthcare, Inc.

As noted above, The Greens is an extended care facility that is operated by the Greens Nursing and Assisted Living, LLC. The Greens Nursing and Assisted Living is a subsidiary of Kindred Nursing Centers East, LLC. Kindred Nursing Centers East is a subsidiary of Kindred Healthcare Operating, Inc. ("KHO") and a holding of KHO's corporate parent, Kindred Healthcare, Inc., which is a Fortune 500 company, whose subsidiaries and affiliates are located in at least 27 states nationwide. Kindred Healthcare, Inc. focuses primarily on the provision of transitional, rehabilitative, and extended care services. It also maintains an interest in assisted living, home health,

and hospice care organizations. Kindred Healthcare, Inc. maintains its corporate headquarters in Louisville, Kentucky. Although it is affiliated with The Greens, Kindred Healthcare, Inc. is thrice removed in terms of the entities' hierarchical relationship. As with many of its affiliates, Kindred Healthcare, Inc. is not involved in either the direct administration of care at The Greens, or the company's day-to-day operations.

II. Brief Statement of Pertinent Facts Underlying Appeal

While in the process of completing protracted written discovery, Plaintiff-Appellee noticed the discovery depositions of at least fourteen individuals. Those individuals whose depositions were noticed included eight clinical and administrative personnel from The Greens, two individuals from the district office above The Greens, separate Civ. R. 30(B)(5) corporate representatives of Kindred Nursing Centers East, LLC and Kindred Healthcare Operating, Inc., Paul Diaz and Lane Bowen, two of the senior-most executives at Kindred Healthcare, Inc. Mr. Diaz is the President and CEO of Kindred Healthcare, Inc. Mr. Bowen is the Executive Vice President of Kindred Healthcare, Inc. and President of the company's Health Services Division. Needless to say, they are at the apex of the Kindred's corporate structure. As executives for Kindred Healthcare, Inc., these individuals are not involved in the oversight or day-to-day operations of any of the company's numerous corporate subsidiaries or affiliated health care facilities. As indisputably demonstrated through their sworn statements regarding the facts and allegations in this pending action, they have no specific knowledge that is in any way relevant to the operation of The Greens or the care of Plaintiff-Appellee's Decedent.

Plaintiff-Appellee insisted on taking the depositions of these apex officials BEFORE completing the depositions of the defendant caregivers and the 30(B)(5)

corporate representatives. Although Defendant-Appellants suggested that the information sought by Plaintiff-Appellee could easily be obtained from other individuals within the Kindred system, Plaintiff-Appellee insisted on going forward with the depositions of the Kindred apex officials BEFORE exploring alternative means of gathering the same. Defendant-Appellants reasonably suggested that those individuals should be deposed before Kindred's highest ranking officials. Then, should their testimony be necessary, Mr. Diaz, Mr. Bowen, and other apex officials from Kindred could be deposed to the extent necessary, thereby potentially averting the significant expense, extraordinary inconvenience, and plain impropriety associated with immediate depositions of unnecessary executives. Plaintiff-Appellee rebuffed the suggestion, insisting that he was entitled to unfettered access to Kindred Healthcare's top executives.

As a result of the parties' inability to reach a mutually acceptable resolution to this dispute, competing motions to compel and for protective order were filed. In support of their motion for protective order, Defendant-Appellants produced affidavits from Mr. Diaz and Mr. Bowen, which unequivocally established their lack of information and involvement in any matter pertaining to Plaintiff-Appellee's claims, or the care that was provided to his Decedent. Without the benefit of a hearing and despite uncontroverted evidence of their lack of knowledge, the trial court granted Plaintiff-Appellee's motion to compel the unrestricted discovery depositions of Paul Diaz and Lane Bowen, without restrictions or limitations of any sort, and simultaneously denied Defendant-Appellants' motion for protective order. See *Journal Entry* (Feb. 12, 2014) and *Journal Entry* (Feb. 12, 2014) (attached as "Exhibits A and B," respectively). These

rulings were made despite the fact that there are several lower level employees of the primary Kindred entities, who arguably possess greater knowledge of the policies, practices, and facts pertinent to the Plaintiff-Appellee's case, all of whom would likely be better suited to address issues germane to Plaintiff-Appellee's wrongful death claims.

Defendant-Appellants appealed the limited portion of the trial court's order that applied to the discovery depositions of Mr. Diaz and Mr. Bowen, contending that the ruling: (1) plainly exceeds the scope of that which is permissible under Civil Rule 26; (2) threatens to establish a disturbing and calamitous precedent; and (3) constitutes the usurpation of justice, thereby invoking the jurisdiction of the appellate court. Defendant-Appellants were unsuccessful in obtaining review from the Eighth District Court of Appeals. Before merit briefs could be filed, the appellate court granted Plaintiff-Appellee's motion to dismiss on the grounds that the trial court's ruling was not appealable under Revised Code 2305.02(B)(4), because it did not involve "discovery of confidential or privileged information." *Journal Entry* (March 14, 2014) (attached as "Exhibit C"). The appellate court, thus, proceeded to dismiss the appeal in its entirety. See *Journal Entry* (March 14, 2014) (attached as "Exhibit D"). For those reasons more fully set forth herein, Defendant-Appellants respectfully suggest that the dismissal of their appeal may have been in error.

PROPOSITIONS OF LAW

Proposition of Law No. 1: Because Revised Code 2305.02 does not provide an exhaustive list of recognized provisional remedies, some interlocutory discovery orders not expressly referenced in the statute are, by their nature and circumstance, final and appealable.

In determining whether an order affecting discovery is appealable, one must first examine the underlying facts in order to determine whether it arose as part of a

provisional remedy. Section (A)(3) of Revised Code 2505.02 defines a “provisional remedy” as “a proceeding ancillary to an action, **including, but not limited to**, a proceeding for a preliminary injunction, attachment, discovery of privileged matter, or suppression of evidence.” (Emphasis added.) Although the General Assembly stopped short of stating that all discovery orders constitute a provisional remedy, this Court has previously explained that the phrase “including, but not limited to” contained in the definition of a “provisional remedy” is indicative of the legislature’s intent to provide a “**non-exhaustive** list of examples.” *State v. South*, 5th Dist. No. 04 CA 38, 2004-Ohio-5073 (emphasis added).

Therefore, when the matter subject to review is of a nature not expressly referenced in the statutory definition of provisional remedy, it is essential to determine whether the remedy at issue was “ancillary” to the primary action. An ancillary action is “one that is attendant upon or aids another proceeding.” *State v. Muncie*, 91 Ohio St.3d 440, 449, 746 N.E.2d 1092, (citing *Bishop v. Dresser Industries*, 134 Ohio App.3d 321, 324, 730 N.E.2d 1079 (1999)). In this instance, the ancillary discovery proceedings at issue were clearly attendant to Plaintiff-Appellee’s primary wrongful death claims. By his own admission, the ancillary proceedings were intended to aid him in the prosecution of those primary claims.

The trial court’s order in this instance also arguably satisfies the two-pronged requirement for appealability under Revised Code 2305.02(B)(4). “The order, in effect, determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy.” R.C. 2305.02(B)(4)(a). Moreover, given the nature of the trial court’s order, Defendant-

Appellants “will not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.” R.C. 2305.02(B)(4)(b). Thus, the trial court’s order should be considered both final and appealable.

The authority upon which the Eighth District Court of Appeals relied in dismissing Defendant-Appellants’ appeal, *Myers v. Toledo*, 110 Ohio St.3d 218 (2006), is factually distinguishable from the matter at hand. That case involved a motion to compel a physical examination of the plaintiff under Civil Rule 35(A), which arose as part of his appeal of an Industrial Commission ruling that stood to affect his workers’ compensation benefits. While the *Myers* case plainly implicated Revised Code 2305.02, the underlying facts and the nature of the order at issue shared nothing in common with the matter at hand. Because *Myers* is so readily distinguishable from the instant action, the appellate court should not have relied upon it as being dispositive of the controversy in question. The court erred when it prematurely and improvidently dismissed Defendant-Appellants’ appeal, effectively depriving them of the ability to seek further present or future recourse. Considering the foregoing, Defendant-Appellants now seek either a remand to the Court of Appeals for consideration of the merits of this appeal, or to establish jurisdiction in this Court for review and resolution of this important issue.

Proposition of Law No. 2: Before the deposition of a high-ranking corporate officer may be taken, the deposing party must demonstrate both that the corporate officer possesses superior or unique information relevant to the issues being litigated and that the information cannot be obtained by less intrusive methods.

“[V]irtually every court which has addressed [the apex doctrine] has observed [that] depositions of persons in the upper level management of corporations often

involved in lawsuits present problems which should reasonably be accommodated in the discovery process.” *Crown Central Petroleum Corp. v. Garcia*, 904 S.W.2d 125, 128 (Tex. 1995). Requiring high-ranking corporate officers to give depositions on a regular basis would undoubtedly impede them in the performance of their duties and, thus, contravene the public interest. See, e.g., *Union Savings Bank v. Saxon*, 209 F.Supp. 319, 319–320 (D.C. 1962). Thus, the doctrine serves an important public policy purpose.

Jurisdictions where the apex doctrine has been considered have determined that it is consistent with the broad provisions of the Civil Rules, “which allow a trial court to control the timing and sequence of discovery for the convenience of parties and witnesses and in the interests of justice.” *Alberto v. Toyota Motor Corp.*, 796 N.W.2d 490, 494 (Mich. App. 2010). Importantly, the apex doctrine has not been used as a shield to discovery, except in those rare instances where it would be of no legitimate benefit to the pending proceedings. See, e.g., *Sneaker Circus, Inc. v. Carter*, 457 F.Supp. 771, 794 at n. 33 (E.D. N.Y. 1978). Instead, the doctrine has been used to sequence discovery in a logical manner that prevents litigants from unnecessarily deposing high-ranking corporate officials as a matter of routine or for unjustified purposes before less burdensome discovery methods have been attempted. *Alberto*, 796 N.W.2d 490.

Unfortunately, discovery has become an abusive tool in the hands of certain attorneys, requiring the adoption and implementation “of procedural rules to curb” abuses. *Mulvey*, 106 F.R.D. at 365. Civil Rule 26 vests courts with authority to control and limit discovery as may be appropriate. The apex doctrine is an extension of this

authority. The overarching purpose of the doctrine is to ensure that discovery is conducted in a logical fashion, limiting the extent to which litigants and non-litigants alike are burdened. Only in those instances where courts have deemed it entirely inappropriate has apex official discovery been disallowed. *Lewelling v. Farmers Ins. of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir.1989) (upholding district court's exercise of discretion in granting protective order to bar plaintiffs from deposing their employer's chief executive officer, who lacked knowledge about any pertinent facts); *Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir.1979) (upholding protective order in a wrongful death action against a drug manufacturer that barred the deposition of the defendant's president because he was extremely busy, lacked direct knowledge of facts in dispute, and other employees had more direct knowledge).

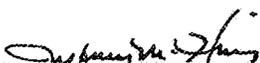
The Eighth District Court of Appeals' decision to dismiss this matter without consideration of the issues presented for review implicitly condones the trial court's rejection of the very ideals that underscore Civil Rule 26. The ruling in question inappropriately subordinates the rights of putative deponents, who are at an increased risk of abuse, to those of litigants by permitting the pursuit of potentially prejudicial, burdensome, and costly discovery, without demonstration by the demanding party that less intrusive methods of attaining the same information have been explored and/or exhausted. Condoning such practices, as the lower court(s) appear to have done, invites further future abuse of the process and disincentivizes, to a certain extent, corporate presence and/or involvement in our State. As such, it is a matter of public and great general interest over which this Court has jurisdiction.

CONCLUSION

The Ohio Rules of Civil Procedure, like their federal counterpart, are designed to permit liberal discovery in the pursuit of case development and trial preparation. They are not, however, without important limitations. Because the permissive parameters of discovery provide opportunities for and are quite susceptible to abuse, courts must frequently weigh the competing interests served by broad discovery against the rights of those who may be unduly prejudiced, burdened, or oppressed by it. Through the logical framework that has come to be known as the apex doctrine, courts can logically and effectively eliminate the potential for prejudice and abuse, without unduly limiting the rights of litigants to conduct appropriate discovery.

As the world continues to grow smaller and individuals are increasingly affected by business interests in the course of their day-to-day lives, the opportunities for corporate involvement in litigation will progressively expand. If nothing else, this case presents prima facie evidence of that fact. Accordingly, it behooves all who could potentially be involved in or affected by such litigation to understand the circumstances under which apex officials will be subject to related discovery proceedings. Whether this honorable Court chooses to remand the matter to the Eighth District Court of Appeals with instructions to consider the issues raised by Defendant-Appellants, or prefers to exercise jurisdiction and weigh in on this important issue, Defendant-Appellants firmly believe that: (1) the matter clearly presents a matter of public and great general interest; and (2) through proper appellate review, needed guidance can be provided, which will inform and affect the manner in which similar discovery disputes are resolved (or obviated) by the various courts of this State going forward.

Respectfully submitted,



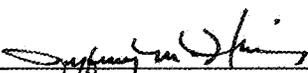
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Beanne Clipper, and Shelly Szarek-Skodny*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing has been served via First Class U.S. Mail, postage prepaid, on this 25th day of April, 2014 to the following:

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Rajesh Agarwal, M.D. and
Rajesh Agarwal, M.D., LLC*



Jeffrey M. Hines

APPENDIX

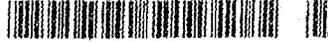
Exhibit A: *Journal Entry* (Feb. 12, 2014) (granting motion to compel)

Exhibit B: *Journal Entry* (Feb. 12, 2014) (denying motion for protective order)

Exhibit C: *Journal Entry* (March 14, 2014) (granting motion to dismiss)

Exhibit D: *Journal Entry* (March 14, 2014) (dismissing appeal)

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82857913

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



DONALD TEMPLEMAN, EXECUTOR
Plaintiff

Case No: CV-12-792299

Judge: SHIRLEY STRICKLAND SAFFOLD

KINDRED HEALTHCARE INC. ETAL
Defendant

JOURNAL ENTRY

PI DONALD TEMPLEMAN SUSAN E PETERSEN 0069741 PLAINTIFF'S MOTION TO COMPEL CERTAIN DISCOVERY DEPOSITIONS OF DEFENDANT KINDRED CORPORATE REPRESENTATIVES, FILED 01/13/2014, IS GRANTED. THE REPRESENTATIVES ARE TO MAKE THEMSELVES AVAILABLE FOR DEPOSITION WITHIN 21 DAYS OF THE GRANTING OF THIS ORDER OR FACE SANCTIONS. ANY FAILURE TO COMPLY IS TO BE BROUGHT TO THE COURT'S ATTENTION VIA WRITTEN MOTION.

IT IS SO ORDERED.

[Signature] 2/10/14

Judge Signature Date

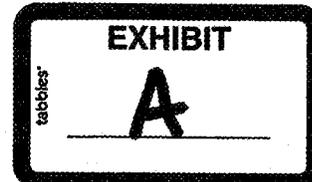
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CUYAHOGA COUNTY

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FEB 12 2014

CUYAHOGA COUNTY
CLERK OF COURTS
By *[Signature]* Deputy



02/04/2014

Page 1 of 1



82857701

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO



DONALD TEMPLEMAN, EXECUTOR
Plaintiff

Case No: CV-12-792299

Judge: SHIRLEY STRICKLAND SAFFOLD

KINDRED HEALTHCARE INC. ETAL
Defendant

JOURNAL ENTRY

DEFENDANT(S) KINDRED HEALTHCARE INC.(D1), KINDRED HEALTHCARE OPERATING, INC.(D2), KINDRED NURSING CENTERS EAST, LLC(D3), GREENS NURSING AND ASSISTED LIVING, LLC(D4), MONIQUE HARRIS(D7), ANITA RENEE SUTTON(D8), SUSAN GAY SHEPARD(D9), BEANNE CLIPPER(D10) and SHELLY SZAREK-SKODNY(D11) PAUL W MC CARTNEY 0040207 MOTION FOR PROTECTIVE ORDER AND BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL CERTAIN DISCOVERY DEPOSITIONS OF DEFENDANT KINDRED CORPORATE DEFENDANTS AND MOTION FOR PROTECTIVE ORDER, FILED 01/21/2014, IS DENIED.

[Handwritten Signature]
Judge Signature

2/10/14
Date

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CLERK OF COURTS
By *[Handwritten Signature]* Deputy



02/04/2014

Page 1 of 1

Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

DONALD TEMPLEMAN, EXEC., ETC.

Appellee

COA NO.
101028

LOWER COURT NO.
CV-12-792299

COMMON PLEAS COURT

-VS-

KINDRED HEALTHCARE, INC., ETC., ET A

Appellant

MOTION NO. 472617

Date 03/14/14

Journal Entry

Motion by Appellee to Dismiss Appeal is granted. The trial court's February 12, 2014 orders (a) granting plaintiff's motion to compel discovery depositions of corporate representatives and (b) denying defendants' motion for a protective order, are not final appealable orders. Discovery orders not involving discovery of confidential or privileged information are not final appealable orders under R.C. 2505.02(B)(4). *Myers v. City of Toledo*, 110 Ohio St.3d 218, 2006-Ohio-4353, 852 N.E.2d 1176.

The court declines to impose sanctions at this time. Accordingly, appellee's motion for expenses and attorney's fees per Appellate Rule 23 is denied.

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MAR 14 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By MAR Deputy

Judge LARRY A. JONES, SR., Concur

Mary Eileen Kilbane
MARY EILEEN KILBANE
Presiding Judge



Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

DONALD TEMPLEMAN, EXEC., ETC.

Appellee

COA NO.
101028

LOWER COURT NO.
CV-12-792299

COMMON PLEAS COURT

-vs-

KINDRED HEALTHCARE, INC., ETC., ET A

Appellant

MOTION NO. 473150

Date 03/14/14

Journal Entry

Appeal dismissed. See separate order of this same date granting appellee's motion to dismiss (motion no. 472617).

FILED AND JOURNALIZED
PER APP.R. 22(C)

MAR 14 2014

CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By Mary Eileen Kilbane Deputy



Judge LARRY A. JONES, SR.; Concur

Mary Eileen Kilbane
MARY EILEEN KILBANE
Presiding Judge

