

ORIGINAL

IN THE SUPREME COURT OF OHIO

Christine Marie Whetstone, Individually	:	Supreme Court of Ohio
and as Parent and Natural Guardian and	:	
Next Friend of O.C. and L.C., Minors	:	Case No. 2014-1462
	:	
Plaintiff/Appellee,	:	
	:	On Appeal from the
v.	:	Fairfield County Court of Appeals,
	:	Fifth Appellate District
	:	
Erin Binner, Administrator of the	:	
Estate of Roxanne McClellan	:	Court of Appeals
	:	Case No. 13 CA 47
	:	
Defendant/Appellant	:	

NOTICE OF DEFENDANT/APPELLANT ERIN BINNER, ADMINISTRATOR OF THE ESTATE OF ROXANNE McCLELLAN, OF DETERMINATION OF NO CONFLICT

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 Erin Binner, Administrator of the Estate
 Of Roxanne McClellan

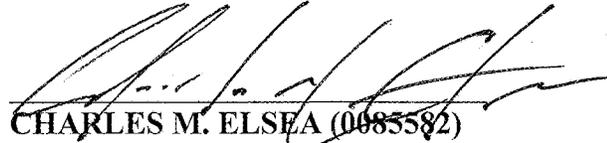
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 Attorney for Plaintiff/Appellee
 Christine Marie Whetstone, Individually
 And as Parent and Natural Guardian and
 Next Friend of O.C. and L.C., Minors

FILED
 SEP 17 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

RECEIVED
 SEP 17 2014
 CLERK OF COURT
 SUPREME COURT OF OHIO

Defendant/Appellant, Erin Binner, Administrator of the Estate of Roxanne McClellan, in accordance with S.Ct.Prac.R. 7.07(B), hereby gives notice of the Judgment Entry of the Fairfield County Court of Appeals, Fifth Appellate District, Case No. 13 CA 47, denying the Motion to Certify a Conflict. The reason for the delay of the instant Notice is that Defendant/Appellant was not immediately served with a copy of this Judgment Entry.

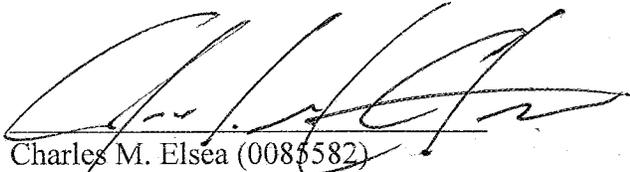
Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and accurate copy of the Notice of Determination of Conflict was served via regular U.S. mail, postage prepaid, upon Grant A. Wolfe, 300 East Broad Street, Suite 450, PO Box 1505, Columbus, OH 43216-1505 on this 16th day of September, 2014.



Charles M. Elsea (0085582)
Attorney for Defendant/Appellant

ORIGINAL

IN THE COURT OF APPEALS FOR FAIRFIELD COUNTY, OHIO

FILED

FIFTH APPELLATE DISTRICT

2014 SEP -2 AM 7:46
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FAIRFIELD CO. OHIO

CHRISTINE MARIE WHETSTONE,
Individually and as Parent and Natural
Guardian and Next Friend of OLIVIA
CASTLE, Minor and LEA CASTLE, Minor

Plaintiff-Appellant

-vs-

JUDGMENT ENTRY

ERIN K. BINNER, Administrator of the
Estate of ROXANNE MCCLELLAN,
Deceased

Defendant-Appellee

CASE NO. 13 CA 47

This matter is before the Court upon a Motion to Certify Conflict filed by appellee Erin K. Binner, Administrator of the Estate of Roxanne McClellan, Deceased. Appellant Christine Marie Whetstone, Individually and as Parent and Natural Guardian and Next Friend of Olivia Castle, Minor, and Lea Castle, Minor, filed a memorandum in opposition to appellee's motion. Appellee filed a reply.

In order to qualify for certification to the Supreme Court of Ohio pursuant to Section 3(B)(4), Article IV of the Ohio Constitution, a case must meet the following three conditions:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be 'upon the same question.' Second, the alleged conflict must be

APPENDIX
A

Fairfield County, Case No. 13 CA 47

on a rule of law – not facts. Third, the journal entry or opinion of the certifying court must clearly set for the rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals.

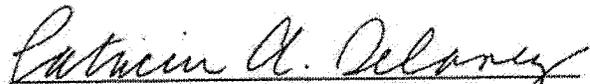
Whitlock v. Gilbane Bldg. Co., 66 Ohio St.3d 594, 596, 613 N.E.2d 1032 (1993).

Appellee argues there is a conflict between our decision in the above-captioned case and *Friedman v. Labos*, 7th Dist. Mahoning No. 2118, 1936 WL 2151 (Oct. 13, 1936). In review of the above-captioned case and *Friedman*, we find the cases contained differing factual circumstances that determined the legal outcome.

Accordingly, we hereby DENY appellee's motion to certify a conflict.

IT IS SO ORDERED.


HON. W. SCOTT GWIN


HON. PATRICIA A. DELANEY