

IN THE SUPREME COURT OF OHIO

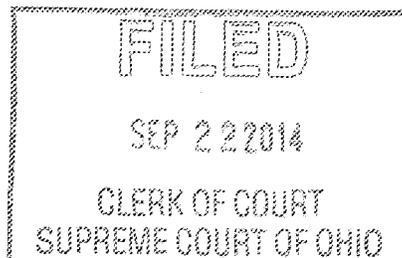
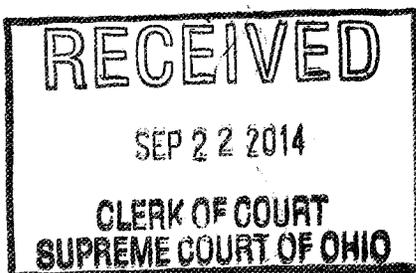
ARETHA BROWN : CASE NO. 2014-1485
Relator : (Original Action in Mandamus)
vs. :
JAMES WILLIAMS, et al. :
Respondents :

**RESPONDENT JAMES E. WILLIAMS' ANSWER AND MOTION TO DISMISS
RELATOR'S ORIGINAL ACTION IN MANDAMUS**

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MEMORANDUM

Now comes Respondent, by and through his undersigned counsel, and hereby submits his Answer and Motion to Dismiss Relator Aretha D. Brown's Original Action in Mandamus. This action is unquestionably untimely filed, and appears to be yet another of multiple prior unfounded efforts by the Relator to seek an unavailable remedy. This filing comes nearly two and one-half (2 ½) years after the underlying personal injury case was dismissed from the Hamilton County Court of Common Pleas. A Memorandum in Support of Respondent Williams's Motion is attached.

I. INTRODUCTION AND PROCEDURAL HISTORY

This matter presumably stems from a motor vehicle accident involving the Relator and Respondent on February 13, 2008 upon which Relator Brown initially filed suit in the Hamilton County Court of Common Pleas on November 27, 2009. This cause was eventually dismissed without prejudice on November 17, 2010 by Judge Winkler for failure of Ms. Brown to appear. Relator Brown then refiled her lawsuit in Hamilton County on August 24, 2011. Judge Winkler dismissed this refiled case on May 9, 2012 for failure of Ms. Brown to respond to discovery and attend her deposition. The May 9, 2012 Dismissal Entry is attached hereto as **Exhibit "A"**.

Ms. Brown filed a "Motion to 'Vacate Judgment' & for 'Stay'" nearly one year later on May 2, 2013, which was denied by Judge Winkler on May 30, 2013. This Order of denial is attached hereto as **Exhibit "B"**. Relator Brown then filed a Motion for Delayed Appeal on November 13, 2013, over one year and six months following the final dismissal of her personal injury case by Judge Winkler. Ms. Brown's Motion for Delayed Appeal was then denied and the Appeal dismissed on December 11, 2013. A copy of this Decision is attached as **Exhibit "C"**.

Relator Brown then filed a “Petition for a Writ of Error Coram Vobis” on December 17, 2013. Respondent Williams filed a Memorandum in Opposition and Relator Brown’s Petition was overruled on January 15, 2014. A copy of this Ruling is attached as **Exhibit “D”**.

Now Relator Brown seeks another remedy in the Supreme Court of Ohio, filing her Original Action in Mandamus on August 26, 2014. This comes six and one-half (6 ½) years following the original date of the motor vehicle accident, nearly five (5) years from the date of filing suit and nearly four (4) years following Judge Winkler’s final dismissal of the cause for failure of Ms. Brown to appear.

II. LAW AND ARGUMENT

Relator Brown’s Original Action in Mandamus is improper as it is filed well beyond the applicable statute of limitations and the preemptory mandamus requested is not warranted under Ohio Revised Code Section 2731.06.

A. Relator Brown’s Original Action in Mandamus Is Untimely as it is Filed Well Beyond the Two (2) Year Statute of Limitations for Bodily Injury Actions.

As this lawsuit stems from a motor vehicle accident, the applicable statute of limitations is that for bodily injury, or Ohio Revised Code Section 2305.10. This provision provides that an action for bodily injury shall be brought within two (2) years after the cause of action accrues. The date of accrual of this cause of action was February 13, 2008, or the date of the motor vehicle accident. It is held “unless a particular statute contains a limitation, a civil action must be commenced within a period prescribed in R.C. 2305.03 to 2305.22.” *State ex rel. R.T.G., Inc. vs. State*, 98 Ohio St.3d 1, 6, 2002-Ohio-6716, P.27, 780 N.E.2d 998, 1004. Chapter 2731 of the Ohio Revised Code which addresses mandamus actions does not contain a statute of limitations. The most analogous statute is Section 2305.10, cited above, for bodily injury actions.

B. Relator Brown Is Not Entitled to a Preemptory Writ As There is No Clear Legal Right to the Relief Requested, No Clear Legal Duty to Perform the Requested Act and a Plain and Adequate Remedy at Law Existed for Her Pursuant to *State ex rel: R.T.G., Inc. v. State, supra.*

In reviewing Relator Brown's Original Action in Mandamus Relator asks Mr. Williams and Nationwide Insurance Company to pay for all damages arising from an automobile collision from which she alleges injuries. The clear legal remedy for such allegations is to seek damages by filing suit in the proper court. Ms. Brown did this and failed to pursue her case or appear for depositions. It is Relator Brown and not Respondent Williams who failed to perform as law and procedure requires. Ms. Brown then had a legal right to appeal this dismissal which she failed to do in a timely manner. With all of these remedies a preemptory writ is unwarranted as there was clearly a remedy at law for damages sustained in this bodily injury action and Ms. Brown continually failed to properly or adequately pursue her remedies.

Additionally, there is no clear legal duty for Respondent Williams to perform the requested act of paying for damages. These issues have not been litigated, and Mr. Williams never had the opportunity to depose Ms. Brown. Mr. Williams never had the opportunity to ask Ms. Brown about her injuries, the allegations of the accident, or explore the alleged issues of negligence, causation and damages applicable to the motor vehicle accident from February 13, 2008 itself. As such, there is no clear legal duty on the part of Mr. Williams to pay any damages, as those damages have not been proven by Ms. Brown.

In accordance with the above, Ms. Brown has failed to establish a clear legal right to damages, and long ago failed to in any way properly, competently or timely pursue her available legal remedies. Without showing a right to the relief requested, a duty to perform and a lack of

adequate remedy at law, a preemptory writ is unavailable to Ms. Brown. See *State ex rel. R.T.G. Inc. v. State, supra.* at 791. The foregoing also demonstrates that Ms. Brown cannot meet her burden under Ohio Revised Code Section 2731.06 as the “right to require the performance of an act” is not clear and has not been demonstrated by Ms. Brown. It is therefore not “apparent that no valid excuse can be given for not doing it...”

Additionally, a preemptory writ should not be issued as it is held writs should only be issued where “material facts are admitted disclosing that the relator is entitled to relief as a matter both of law and fact...An alleged right to performance is unclear when the facts underpinning the claimed right are not admitted and it has not been established that no valid excuse can be given for nonperformance of that alleged duty.” *State ex rel. Temke v. Outcault*, 49 Ohio St.2d 189 191, 360 N.E.2d 701, 702 (1977), citing *State ex rel. Golf Ref. Co. v. DeFrance*, 89 Ohio App. 334, 338, 101 N.E.2d 782 (1950). Respondent Mr. Williams is not admitting, and has never admitted, the Relator Brown is entitled to relief and this Respondent vehemently denies Ms. Brown is entitled to any remedy as a matter of both law and fact. Additionally Mr. Williams has a “valid excuse” for this alleged nonperformance as Ms. Brown continually failed in any way to properly, competently, or timely participate in litigation or timely pursue any remedies which were long ago available to her.

III. CONCLUSION

For all of the above aforementioned reasons, Respondent Williams respectfully requests this Court strike, or in the alternative deny, Relator Brown's Original Action in Mandamus in accordance with Ohio law and Ohio Revised Code Section 2731.06.

Respectfully submitted,



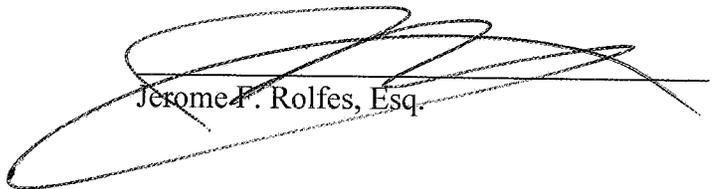
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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Respondent James E. Williams's Answer and Motion to Dismiss Relator's Original Action in Mandamus was served this 19th day of September, 2014, via ordinary U.S. mail upon the following:

Ms. Aretha Brown
293 Manzanita Ranch Lane
Henderson, Nevada 89012
Relator Pro Se

J. Stephen Teetor
Isaac Wiles Burkholder & Teetor LLC
2 Miranova Place, Suite 700
Columbus, Ohio 43215
Attorney for Respondent Nationwide



Jerome F. Rolfes, Esq.

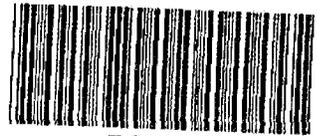
EXHIBIT
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Ralph E. Winkler

ENTERED
MAY 09 2012

FOR COURT USE ONLY
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Line #: _____

COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO



D97563662

ARETHA BROWN,



PLAINTIFF

CASE NO. A1106653

JUDGE RALPH E. WINKLER

V.

JAMES WILLIAMS, et al.,

DEFENDANT

ENTRY GRANTING MOTION
TO DISMISS

This matter has come before the court on the motion of the defendant, James Williams to dismiss the case for failing to respond to discovery and failure to attend her deposition. For good cause shown, the motion is granted and the case is hereby dismissed with prejudice.

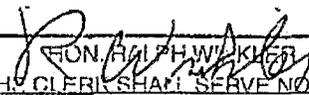
Defendant Williams has shown that the plaintiff has not been prosecuting her case in accordance with the Ohio Rules of Civil Procedure. He has shown that Plaintiff has repeatedly refused to comply with reasonable and appropriate discovery requests, including the medical information that would be necessary for anyone to evaluate the extent of her injuries. For this reason, Defendant was forced to issue a notice of deposition on March 21, 2012, setting the deposition for April 13, 2012. The Plaintiff did not attend.

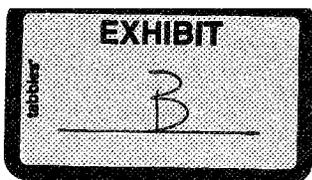
Plaintiff, on the fax cover sheets she uses to file documents with the Clerk of Courts, describes herself as "Severely Injured Auto Collision Victim." It would be reasonable to surmise that a person so injured would not be able to attend the deposition noticed by Defendant. However, it seems clear that the scheduling of this deposition was the result of having repeated discovery requests ignored by Plaintiff. Therefore, the court finds that a dismissal is appropriate for these circumstances.

It is also important to note that while the plaintiff was refusing to respond to discovery requests, attend her deposition and otherwise appropriately litigate her case, she spent her energy pursuing multiple ethics complaints against defense counsel. The court finds this extremely disappointing. The object of litigation is to arrive at justice and the truth. It seems that Plaintiff has accused defense counsel of making false statements while leaving him with no discovery with which to use in ascertaining a true value of her damages. The way that Plaintiff has attacked the credibility and professionalism of an honorable attorney with an impeccable record is absolutely inexcusable. It is the hope of the court that defense counsel is not prejudiced in the future in any way by the vexatious and vindictive complaints brought against him by the

plaintiff.

For the above listed reasons, the motion to dismiss filed by Defendant is granted and all claims brought by Plaintiff are hereby dismissed. Costs to Plaintiff. The request of attorney's fees by Defendant is denied.

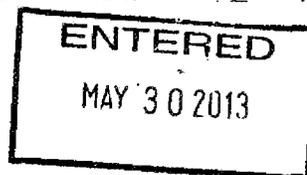
COURT OF COMMON PLEAS
ENTER

JUDGE RALPH E. WINKLER
THE CLERK SHALL SERVE NOTICE
TO PARTIES BY MAIL FOR WHICH
RULE 53 WHICH SHALL BE TAXED
AS COSTS HEREIN.



D102282233

COURT OF COMMON PLEAS

HAMILTON COUNTY OHIO



ARETHA BROWN,

PLAINTIFF

V.

JAMES E. WILLIAMS, et al.,

DEFENDANT

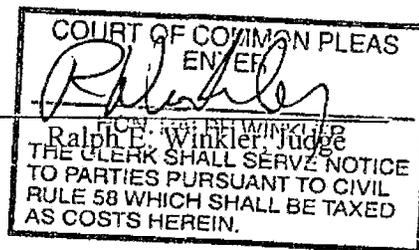
CASE NO. A0911260

RE-FILE CASE NO. A1106653

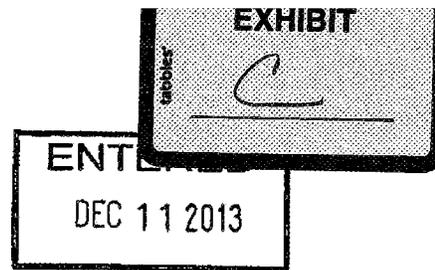
JUDGE RALPH E. WINKLER

ENTRY DENYING MOTION
TO VACATE JUDGMENT AND
FOR "STAY"

This matter has come before the court upon Plaintiff's Motion to Vacate Judgment and for "Stay." After considering arguments of Plaintiff and Defendant, for good cause shown, the court finds the motion is not well founded and hereby denies the Defendant's Motion to Vacate Judgment and for "Stay." So ordered this thirtieth day of May, 2013.



IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



ARETHA BROWN,
Appellant,

APPEAL NO. C-130762
TRIAL NO. A-1106653

vs.

ENTRY OVERRULING MOTION
FOR DELAYED APPEAL

JAMES E. WILLIAMS,
Appellee.



This cause came on to be considered upon the motion of the appellant for delayed appeal and upon the combined motion to strike and memorandum in opposition.

The Court finds that the motion is not well taken and is overruled. The appeal is hereby dismissed.

To the clerk:

Enter upon the journal of the court on DEC 11 2013 per order of the court.

By *Patricia Penhale* (Copies sent to all counsel)
Presiding Judge

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

ENTERED
JAN 15 2014

EXHIBIT
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ARETHA BROWN,
Appellant,

APPEAL NO. C-130762
TRIAL NO. A-1106653

vs.

ENTRY OVERRULING PETITION FOR
WRIT OF ERROR *CORAM VOBIS*

JAMES E. WILLIAMS,
Appellee.

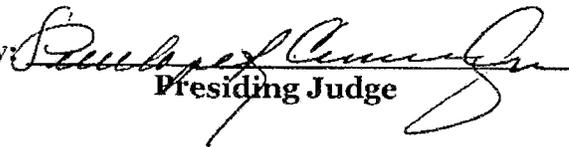


This cause came on to be considered upon the petition of the appellant for writ of error *coram vobis* and upon the memorandum in opposition.

The Court finds that the petition is not well taken and is overruled.

To the clerk:

Enter upon the journal of the court on JAN 15, 2014 per order of the court.

By:  (Copies sent to all counsel)
Presiding Judge