
IN THE SUPREME COURT OF OHIO

EVA ANN HUBIAK, ET AL.,

Plaintiffs-Appellees,

v.

OHIO FAMILY PRACTICE CENTER, INC., ET AL.,

Defendants-Appellants

SUPREME COURT CASE NO. 2014-1500

**On appeal from the Summit County Court of Appeals, Ninth Appellate District
Case No. CA-26949**

**MOTION FOR RECONSIDERATION OF FEBRUARY 18, 2015 DECISION
DECLINING JURISDICTIONAL APPEAL OF APPELLANTS, OHIO FAMILY
PRACTICE CENTER, INC., AMY C. NEWMAN, PAC, RICHARD JAMES DOM DERA,
M.D., AND KELLI SABIN, M.D.**

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Pursuant to S.Ct.Prac.R. 18.02, Appellants, Ohio Family Practice Center, Inc., Amy C. Newman, PAC, Richard James Dom Dera, M.D., and Kelli Sabin, M.D. (collectively, "Ohio Family") move for reconsideration of the Court's February 18, 2015 Decision in which the Court, in a 4-3 decision, declined acceptance of Ohio Family's jurisdictional appeal. While cognizant of the limited application and scope of their Motion pursuant to S.Ct.Prac.R. 18.02(B), Ohio Family states that additional facts and circumstances that occurred after the filing of its Jurisdictional Memorandum warrant further consideration of Ohio Family's appeal.

Specifically, Ohio Family's Notice of Appeal and Memorandum in Support of Jurisdiction was filed on August 28, 2014. Thereafter, on September 5, 2014, in the matter captioned, *Nathan Suiter, et al. v. Hojatollah Karimian, M.D., et al.*, 9th Dist. No. 27496, the plaintiffs therein appealed the Summit County Court of Common Pleas August 28, 2014 decision dismissing plaintiffs' complaint with prejudice for failure to timely commence and the failure of personal jurisdiction arising out of improper service by Federal Express. (See Appendix A). In finding that dismissal with prejudice of a case filed more than four (4) years prior was warranted, the trial court in *Suiter* heavily relied upon the Ninth District's underlying decision in this appeal.

As Ohio Family has previously stated, the state of the law in the Ninth District pursuant to the Ninth District's decision herein continues to portend uncertainty in jurisprudence for all litigants. While the Ninth District's underlying decision provided Appellees a reprieve from the failure to timely commence and serve Ohio Family with a Complaint, that same decision was applied by the Summit County Court of Common

Pleas in *Suiter* to substantiate dismissal with prejudice in a case of largely similar procedural posture.¹

This appeal constitutes a matter of public and great general interest, as well as a general interest in jurisprudence to ensure that the law is administered in the Summit County Court of Common Pleas and the Ninth District Court of Appeals in uniform fashion. Deciding the Propositions of Law offered by Ohio Family and the Co-Appellants herein would allow this Court to establish a rule of law that would significantly reduce litigation and appeal costs for numerous participants in high-stakes civil litigation – wrongful death and personal injury medical malpractice claims – filed over the course of three (3) years and seven (7) days in Summit County. Especially so where ten (10) Common Pleas Judges and five (5) Judges in the Court of Appeals are currently bound by the law of *Hubiak* – a decision rendered by a panel of extra-territorial judges sitting by assignment. What is more, the law of the Ninth District as currently constructed in *Hubiak* consists of precedent that essentially found the only reason the Appellees' complaint could proceed against all Appellants was because one (1) of three (3) sets of Appellants allegedly waived an affirmative defense that was unquestionably preserved by the other two (2).

Based upon such precedent, as is reflected in *Suiter*, a trial court may look to the actual substantive legal conclusions of the Ninth District and dismiss long-standing civil litigation with prejudice, or look to the equitable maneuvering by the Ninth District to find an excuse to revive a time-barred action. If this Court accepts jurisdiction, regardless of

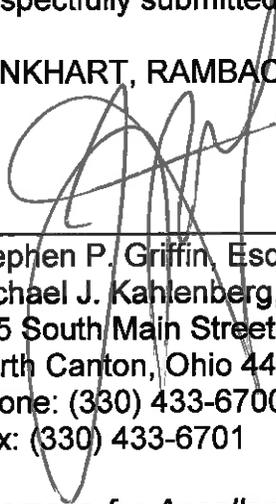
¹ And in any event, it is fair to anticipate that unless the Supreme Court rules in this matter with clarity as to the state of the law, no matter how the Ninth District ultimately decides *Suiter*, it will be the subject of an immediate discretionary appeal to this Court for yet another argument of whether an action that proceeded in the absence of fundamental jurisdiction may be rescued years later by happenstance amendment of the Civil Rules.

whether it affirms or reverses in ruling upon the proffered Propositions of Law, the guesswork left by the Ninth District's underlying decision herein will be eradicated in favor of a clear rule of law for all litigants.

For these reasons, as well as those previously set forth in Ohio Family's Memorandum in Support of Jurisdiction, filed August 28, 2014, Ohio Family moves for reconsideration of this Court's February 18, 2015 Decision declining jurisdiction.

Respectfully submitted,

WINKHART, RAMBACHER & GRIFFIN

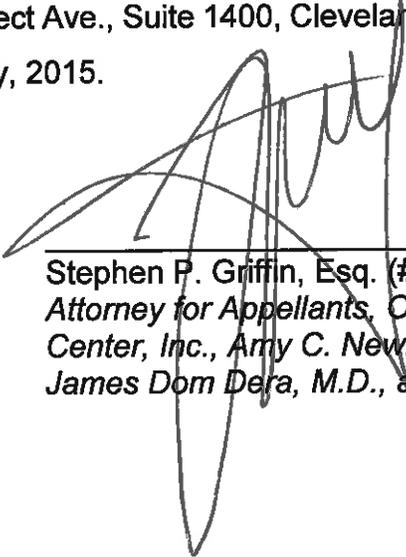


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Attorneys for Appellants, Ohio Family Practice Center, Inc., Amy C. Newman, PAC, Richard James Dom Dera, M.D., and Kelli Sabin, M.D.

Certificate of Service

The undersigned certifies that a copy of the foregoing MOTION FOR RECONSIDERATION was sent by regular U.S. Mail to Paul G. Perantinides, Esq. and Antonios P. Tsarouhas, Esq., Counsel for Appellants at 300 Courtyard Square, 80 South Summit Street, Akron, OH 44308; Douglas G. Leak, Esq., Counsel for Appellees Akron Radiology, Inc. and Jeffrey S. Unger, M.D., 1375 E. Ninth St. 9th Floor, Cleveland, OH 44114; and, Marc Groedel, Esq., Counsel for Appellees Summit Ophthalmology, Inc. and Charles Peter, M.D., 101 West Prospect Ave., Suite 1400, Cleveland, OH 44115-1093 by ordinary mail this 27th day of February, 2015.



Stephen P. Griffin, Esq. (#0039655)
*Attorney for Appellants, Ohio Family Practice
Center, Inc., Amy C. Newman, PAC, Richard
James Dom Dera, M.D., and Kelli Sabin, M.D.*

APPENDIX A

COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT

Docketing Statement

Appeal No. 27496

DANIEL M. MORRIGAN

A time-stamped copy of the final judgment being appealed must be attached to this statement.

2014 SEP -5 PM 3:38

Trial Court Name Summit County Common Pleas Court

Trial Court Caption Nathan Suiter, et al
(Name of first plaintiff)

SUMMIT COUNTY
CLERK OF COURTS

versus

Hojatollah Karimian, M.D., et al.
(Name of first defendant)

Trial Court Case Number CV2010-05-3824

Trial Court Judge Paul J. Gallagher

App.R. 11.2 Expedited Appeal YES NO

2014 SEP -5 PM 3:43
CLERK OF COURTS

THE RECORD

Mark the paragraph that applies.

TO THE CLERK OF COURTS: Please immediately assemble and transmit the record in this case. I certify that the paragraph I marked accurately describes the complete record to be filed:

1. X The record will consist of **ONLY** the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment.
2. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by a court reporter appointed by the trial court, who I served with a praecipe that I also filed with this court.
3. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a statement of the evidence or proceedings pursuant to App.R. 9(C) or an agreed statement of the case pursuant to App.R. 9(D).
4. _____ The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and both a transcript of proceedings prepared by a court reporter appointed by the trial court and a statement of the evidence or case pursuant to App.R. 9(C) or (D).

If you intend to rely upon a transcript of proceedings filed in an earlier appeal, you must seek permission from the court to supplement the record in this appeal with the transcript filed in the earlier appeal.

A time-stamped copy of the final judgment being appealed must be attached to this statement.
If the order appealed is not final and appealable under R.C. 2505.02, the Court must dismiss the appeal.

THE PARTIES

Please provide the following information for all parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc). See Local Rule 3. If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. Appellant must attach a copy of any order that resolved a claim against any of the parties.

<p>Party's name: Nathan Suiter, by and through his Guardian, Melania Behrens</p> <p>Party's designation: Plaintiff-Appellant</p> <p>Attorney's name: David A. Kulwicki, Esq.</p> <p>Attorney's registration number: 0041106</p> <p>Address of counsel or party: Mishkind Law Firm Co., L.P.A., 23240 Chagrin Blvd., Suite 101, Cleveland, OH 44122</p> <p>Phone: 216-595-19000 Fax: 216-595-1633</p> <p>Email: dkulwicki@mishkindlaw.com</p>	<p>Party's name: Hojatollah Karimian, M.D.</p> <p>Party's designation: Defendant-Appellee</p> <p>Attorney's name: David M. Best, Esq.</p> <p>Attorney's registration number: 0014349</p> <p>Address of counsel or party: 4900 West Bath Rd. Akron, OH 44333</p> <p>Phone: 330-665-1855 Fax: 888-364-9803</p> <p>Email: dmb@dmbestlaw.com</p>
<p>Party's name: Mary Suiter</p> <p>Party's designation: Plaintiff-Appellant</p> <p>Attorney's name: David A. Kulwicki, Esq.</p> <p>Attorney's registration number: 0041106</p> <p>Address of counsel or party: Mishkind Law Firm Co., L.P.A., 23240 Chagrin Blvd., Suite 101, Cleveland, OH 44122</p> <p>Phone: 216-595-19000 Fax: 216-595-1633</p> <p>Email: dkulwicki@mishkindlaw.com</p>	<p>Party's name: Howard D. Shapiro, M.D.</p> <p>Party's designation: Defendant</p> <p>Attorney's name: Anna Moore Carulas, Esq.</p> <p>Attorney's registration number: 0037161</p> <p>Address of counsel or party: 1375 East Ninth Street, One Cleveland Center, 9th Floor, Cleveland, OH 44114</p> <p>Phone: 216-623-0150 Fax: 216-623-0134</p> <p>Email: acarulas@ralaw.com</p>
<p>Party's name _____</p> <p>Party's designation _____</p> <p>Attorney's name _____</p> <p>Attorney's registration number _____</p> <p>Address of counsel or party _____</p> <p>Phone _____ Fax _____</p> <p>Email _____</p>	<p>Party's name: Summit Neurological Associates, Inc.</p> <p>Party's designation: Defendant</p> <p>Attorney's name: Anna Moore Carulas, Esq.</p> <p>Attorney's registration number: 0037161</p> <p>Address of counsel or party: 1375 East Ninth Street, One Cleveland Center, 9th Floor, Cleveland, OH 44114</p> <p>Phone: 216-623-0150 Fax: 216-623-0134</p> <p>Email: acarulas@ralaw.com</p>

COPY

GENERAL INFORMATION

Was a stay requested in the trial court? Yes No

If a stay was requested, how did the trial court rule? Granted Denied Pending

If this case has previously been before this Court, list prior appellate case number(s): _____

List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: _____

Probable issues for appeal: (1) Whether Defendant-Appellee waived his Civ.R. 12(B)(2) affirmative defense by failing to raise it with previous Civ.R. 12(B) motion to dismiss as required by Civ.R. 12(G)-(H)? (2) Whether amendment to Civ.R. 4.1 permitting service by express mail applies retroactively.

CRIMINAL CASE

Misdemeanor Felony
 Trial Guilty/No contest plea

Charges _____

Sentence _____

Type of Appeal: Defendant's Appeal as of Right State's Appeal as of Right
 Defendant's Appeal by Leave of Court State's Appeal by Leave of Court

CIVIL CASE

Type of action in trial court? Professional Tort.

Have the parties previously participated in mediation of this dispute? Yes No

Would a mediation conference assist in the resolution of this matter? Yes No Maybe

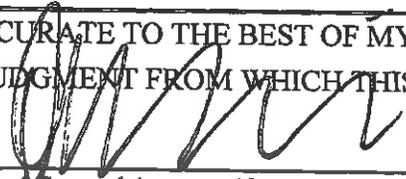
Must this case be expedited as being one of the following types of cases? Yes No

App.R. 11.2(B) or (C) appeals (abortion without parental consent, adoption, and parental rights)

App.R. 11.2(D) appeals (dependent, abused, neglected, unruly, or delinquent child appeals)

Appeal under determination of local fiscal emergency brought by municipal corporation

Election contests as provided in R.C. 3515.08

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE ATTACHED A COPY OF THE FINAL JUDGMENT FROM WHICH THIS APPEAL IS TAKEN.


Signature of Counsel (or party if not represented by counsel)

was not authorized by the Ohio Civil Rules at the time). July 11, 2013 Order. Also at that time, this Court declined to dismiss the matter upon strict application of the Civil Rules, finding the error involved in service was the fault of the General Division of the Court of Common Pleas, not the Plaintiffs. This Court's opinion on that matter has not changed: it is contrary to the concepts of justice and fair play for Plaintiffs to have their cases dismissed because they were trapped by the FedEx service errors by reliance upon a standing order of the Court of Common Pleas for FedEx service. Several of my colleagues have also acknowledged the unfairness involved with this issue. *White v. Summa Health System Barberton Hospital*, CV2011-07-3870 (Judge Teodosio); *Silbaugh v. Summa Health System*, CV2011-08-4758 (Judge Rowlands); *Kruskamp v. Ciraldo, M.D.*, CV2010-08-5880 (Judge Corrigall Jones).

Another year has passed and the procedural posture for review of this issue has changed as the Ninth District Court of Appeals has provided some guidance in determining whether a subsequent amendment to the Rules of Civil Procedure can cure the error presented herein. *Hubiak v. Ohio Family Practice Center, Inc.*, 9th Dist. App. No. 26949, 2014 Ohio 3116 (Summit Co. July 16, 2014). This matter is set for trial in October 2014.

Where the affirmative defense of insufficiency of service of process is properly raised and preserved, a party's active participation in the litigation does not constitute a waiver of that defense. *Gliozzo v. Univ. Urologists of Cleveland, Inc.*, 114 Ohio St.3d 141, 2007 Ohio 3762, 870 N.E.2d 714, *syllabus* (2007). "A defendant who raises an affirmative defense for insufficiency of service of process before actively participating in the case continues to have an adequate defense relating to service of process." *Delarosa v. Taylor Edwards Addison Transp.*, 9th Dist. App. No. 04CA0047, 2005 Ohio 1130, ¶10 (Wayne Co. March 16, 2005) (emphasis added). Indeed, the defense is preserved even after trial has begun, all the evidence has been presented, and the defendant then files a motion to dismiss for insufficiency of process. *First Bank of Marietta v. Cline*, 12 Ohio St.3d 317, 466 N.E.2d 567 (1984).

A Civ.R. 12(B)(2) Motion to Dismiss for Lack of Personal Jurisdiction allows for consideration of the record in rendering the decision, including documentary evidence outside of the complaint. *Hubiak*, 2014 Ohio 3116, ¶7.

The undisputed record facts are:

(1) Plaintiffs medical malpractice action was filed on May 27, 2010, against Dr. Karimian and Akron General Medical Center ("AGMC").

(2) The Complaint was served by commercial carrier, FedEx, in June 2010; that service of process was insufficient / ineffective / improper. *J.Bowers*, 2012 Ohio 1171; *Emerson*, 2012 Ohio 5647; *Hubiak*, 2014 Ohio 3116.

(3) Dr. Karimian received the Complaint and answered asserting the affirmative defense that, "Plaintiffs have failed to obtain appropriate jurisdiction due to the lack of service, inadequacy of service and failure of appropriate service." AGMC also answered the Complaint and asserted its affirmative defenses (including service of process); AGMC was voluntarily dismissed from the suit in September 2010; the lawsuit remained against Dr. Karimian only.

(4) Over one year after Plaintiffs filed their Complaint, on December 29, 2011, this Court granted Plaintiffs leave to file an Amended Complaint and add additional defendants to this action.

(5) The Amended Complaint was served on all named Defendants via FedEx in January 2012. Prior to July 1, 2012, service by FedEx was insufficient / ineffective / improper. *See Id.* On July 1, 2012 the Rules of Civil Procedure were amended to permit FedEx service of process. Civ.R. 86(II) allows the amended Rules to be applied retroactively to cases "pending" at the time of amendment. *Hubiak*, 2014 Ohio 3116.

(6) Dr. Karimian answered the Amended Complaint and reasserted his affirmative defenses.

(7) Dr. Karimian has never waived his affirmative defenses; he moved for Judgment on the Pleadings for insufficiency of service of process in 2013, and has renewed the matter again by a Motion to Dismiss for Lack of Personal jurisdiction (August 1, 2014).

Facing these facts, in opposition to dismissal for lack of personal jurisdiction Plaintiffs assert Dr. Karimian waived the affirmative defense of lack of personal jurisdiction by failing to consolidate the defense in other motions, citing Civ.R. 12(G)-(H).

The Court finds,

In some instances, a party who voluntarily submits to the court's jurisdiction may waive available defenses, such as insufficiency of service of process or lack of personal jurisdiction. *Maryhew v. Yova*, 11 Ohio St.3d 154, 156-157, 464 N.E.2d 538 (1984). The only way in which a party can voluntarily submit to the court's jurisdiction, however, is by failing to raise the defense of insufficiency of service of process in a responsive pleading or by filing certain motions before any pleading. *Id.* at 157-158. Only when a party submits to jurisdiction in one of these manners will the submission constitute a waiver of the defense.

Glozzo v. University Urologists of Cleveland, 114 Ohio St.3d 141, 2007 Ohio 3762, ¶13, 870 N.E.2d 714 (emphasis added).

Dr. Karimian filed a responsive pleading (answer) to the Complaint setting forth his affirmative defenses. Dr. Karimian later filed various other motions throughout the course of these proceedings (i.e., motions which were filed after pleading). Dr. Karimian properly raised his affirmative defenses via responsive pleading and properly preserved his defense by reasserting it in each of his answers to Plaintiffs amended complaints, by a Motion for Judgment on the Pleadings, and by a Motion to Dismiss for Lack of Personal Jurisdiction.

“When the affirmative defense of insufficiency of service of process is properly raised and properly preserved, a party’s active participation in the litigation of a case does not constitute a waiver of that defense.” *Id.* at *syllabus*.

Accordingly, Dr. Karimian’s active participation in this litigation did not serve to waive his affirmative defenses.

Plaintiffs also object to dismissal of Dr. Karimian due to the procedural posture in which Dr. Karimian’s Motion to Dismiss for Lack of Personal Jurisdiction presents. Specifically, on August 1, 2014, Dr. Karimian’s moved to Dismiss for Lack of Personal Jurisdiction because this Court ordered Plaintiffs to serve Dr. Karimian in July 2013 when it overruled Dr. Karimian’s Motion for Judgment on the Pleadings regarding these same issues. Dr. Karimian points out that Plaintiffs did not re-serve him as directed by Court Order. Plaintiffs assert their failure to timely re-serve the Complaint pursuant to Court Order is excusable neglect.

The Court finds the procedural posture is irrelevant. First, “[i]f any of the Civ.R. 12(B) defenses are raised whether by motion or pleading, then Civ.R. 12(D) provides that they shall be heard and determined before trial or upon application of any party.” *Glozzo*, 2002 Ohio 3762, ¶7 (emphasis added). Second, a change in circumstances in the case law regarding this specific issue warrants reconsideration of the Court’s July 11, 2013 [Interlocutory] Order. Finally, a review of that subsequent case law (*Hubiak*) reveals any such “re-service” upon Dr. Karimian would have been a futile act. Plaintiffs shall not be punished for failing to accomplish a futile act.

As noted, the Ninth District Court of Appeals has provided some guidance for resolution of the FedEx service issues. *Hubiak*, 2014 Ohio 3116. The Court is directed to determine if this

case was “pending” against Dr. Karimian when the Civil Rules were amended to allow service of process by a commercial carrier such as FedEx.

Civ.R. 86(II) governs the date of effectiveness of the amendment to Civ.R. 4.1 (which now allows service by commercial carriers such as FedEx). The amendment became effective July 1, 2012, and the amendments apply to “further proceedings in actions then pending.” Civ.R. 86(II); *Hubiak*, ¶22. A case must have “commenced” pursuant to Civ.R. 3(A) to be “pending” for application of Civ.R. 86(II). See *Id.* Where at least one set of defendants has waived the affirmative defense of proper service, the action “commenced” on the date of the waiver. *Hubiak*, ¶29.

In this case, from the date of filing of the Complaint (May 27, 2010), Plaintiffs had one year to obtain proper service of process in order for this suit to “commence.” Civ.R. 3(A); and see *Hubiak*, ¶36. Dr. Karimian and AGMC were not properly served and each asserted their affirmative defense regarding the insufficiency of service of process in their answers. AGMC was voluntarily dismissed from the action shortly thereafter. Dr. Karimian was the only named defendant until Plaintiffs were granted leave to amend their Complaint and add several more defendants on December 29, 2011. Dr. Karimian again was not properly served (because service was by FedEx prior to the amendment of the Civil Rules). Dr. Karimian answered the Amended Complaint and re-asserted his affirmative defenses.

From May 27, 2010 to May 28, 2011 (the one year requirement to obtain proper service under Civ.R.3(A)) Plaintiffs did not obtain proper or sufficient service of process upon Dr. Karimian to overcome his affirmative defense. And, because proper service was not achieved within one year of the filing of the Complaint, this action did not “commence” against Dr. Karimian. Service of the Amended Complaint (eighteen months after the filing of the Complaint) did not serve to commence the matter against Dr. Karimian. At the time of service of Plaintiffs Amended Complaint this action was not pending against Dr. Karimian (or any other named defendant that had waived the affirmative defense of service of process). Thus, in this case, Civ.R. 86(II) cannot be applied to retroactively incorporate the amendment of Civ.R. 4.1. See *Hubiak*.

This Court favored proceeding on the merits in hopes that an attempt in curing the error (an error that should not be attributed to Plaintiffs), would impart a sense of justice and fairness. Indeed, Dr. Karimian himself recognizes that this Court’s July 11, 2013 Order was “an attempt to

equitably bring Plaintiffs deficient pleading practices within the requirements of the Civil Rules.” Despite Plaintiffs noncompliance with the July 11, 2013 Order, subsequent events prove any “re-service” pursuant to Court Order would be futile.

This Court’s personal opinion abhorring the harsh results herein is entitled to no deference by a reviewing court; rather, a *de novo* review reveals this action never even commenced against Dr. Karimian. While the errors are not attributable to Plaintiffs, it is beyond dispute this Court lacks jurisdiction to render a valid judgment against Dr. Karimian and there is no legal justification to hold Dr. Karimian subject to these proceedings.

Accordingly, Plaintiffs’ Motion for Extension of Time to Serve Second Amended Complaint is OVERRULED. Dr. Karimian’s Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED and Dr. Karimian is dismissed from this matter with prejudice upon expiration of the statute of limitations.

The record facts regarding the statute of limitations are:

(1) Plaintiff Nathan Suiter suffered a debilitating stroke on December 15, 2008; it is alleged Mr. Suiter was rendered with an “unsound mind” as a result of the stroke. There is a genuine issue of material fact as to whether the statute of limitations was tolled by Mr. Suiter’s unsound mind for the alleged medical negligence of Dr. Shapiro and his practice Summit Neurological Associates, Inc. January 2, 2013 Judgment Entry. The running or tolling of the statute of limitations was never determined as it relates to the claim against Dr. Karimian. *Id.*

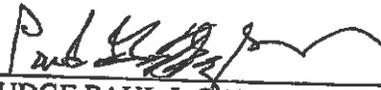
(2) Mr. Suiter’s treating cardiologist was Dr. Karimian. The medical negligence alleged against Dr. Karimian occurred prior to Mr. Suiter’s debilitating stroke (i.e., Mr. Suiter’s mind was rendered unsound after the cause of action accrued as alleged against Dr. Karimian).

(3) “After the cause of action accrues, if the person entitled to bring the action becomes of unsound mind and is adjudicated as such by a court of competent jurisdiction or is confined in an institution or hospital under a diagnosed condition or disease which renders the person of unsound mind, the time during which the person is of unsound mind and so adjudicated or so confined shall not be computed as any part of the period within which the action must be brought.” R.C. §2305.16.

(4) The record is devoid of evidence that Mr. Suiter was adjudicated to have an unsound mind or that he was confined in an institution or hospital under a diagnosed condition or disease which rendered him of "unsound mind."¹

(5) Without an adjudication or confinement, the statute of limitations for a cause of action does not toll when the plaintiff's mind becomes unsound after the cause of action accrues. R.C. §2305.16; and see fn.1. Accordingly, the statute of limitations for Mr. Suiter's medical negligence claim against Dr. Karimian has expired.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Defendant Karimian's Motion to Dismiss for Lack of Personal Jurisdiction is GRANTED. Defendant Karimian is dismissed from this action with prejudice. This is a final and appealable Order and there is no just cause for delay.



JUDGE PAUL J. GALLAGHER

cc: Attorney David M. Best
Attorney David A. Kulwicki
Attorney Anna Moore Carulas

¹ " * * * If it is claimed that [plaintiff] became of unsound mind after the accrual of the cause of action, [], the evidence on that issue must include either an adjudication by a court or evidence that [plaintiff] was institutionalized or hospitalized for a condition or disease that caused [plaintiff] to be of unsound mind. The tolling provided by R.C. 2305.16 for someone who became of unsound mind after the accrual of [his/her] cause of action lasts only during the period 'during which [the] person is adjudicated as being of unsound mind or confined under a diagnosed condition which renders [him/her] of unsound mind.'" *Bradford, GDN v. Surgical & Med. Neurology Assoc., Inc.*, 95 Ohio App.3d 102, 106, 641 N.E.2d 1177, quoting *Fisher v. Ohio Univ.*, 63 Ohio St.3d 484, 487, 589 N.E.2d 13 (1992).