Supreme Court of Ohio Clerk of Court - Filed May 29, 2015 - Case No. 2015-0873

IN THE SUPREME COURT OF OHIO

Lindsay Walsh	)	
	)	
Appellee,	)	On Appeal from the Hamilton
	)	County Court of Appeals,
	)	First Appellate District
vs.	)	
	)	
Abubakar Atiq Durrani, M.D., et al.	)	Court of Appeals
	)	Case No. C 1500143
Appellants.	)	

JOINT MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANTS ABUBAKAR ATIQ DURRANI, M.D., CINCINNATI CHILDREN'S HOSPITAL MEDICAL CENTER, AND CENTER FOR ADVANCED SPINE TECHNOLOGIES, INC.

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I. EXPLANATION OF WHY THIS CASE IS ONE OF GREAT IMPORTANCE

There are instances in which a trial court's order to consolidate cases is so wholly inappropriate and so prejudicial that immediate appeal is necessary to prevent substantial injustice. This case involving Defendant-Appellant, Abubakar Atiq Durrani, M.D., (hereinafter "Dr. Durrani") and Defendant-Appellant, Cincinnati Children's Hospital Medical Center, and the other consolidated cases before this Court involving additional Defendants-Appellants (hereinafter "Appellants") exemplify how such an order results in injustice and violation of the Appellants right to due process that cannot be undone at a later stage of the litigation. The Consolidation Order in this case consolidated over fifty cases involving Dr. Durrani and other Appellants, at the request of Plaintiffs-Appellees (hereinafter "Appellees"), in contravention of the procedural rules, resulting in an appearance of impropriety and a deprivation of Appellants' procedural due process rights that will cause extreme prejudice to the Appellants.

The central issue in this case is whether the grant of a motion to consolidate is a final, appealable order pursuant to R.C. 2505.02. A single Judge on the Hamilton County Court of Common Pleas, on motion of Appellees to consolidate the case before him specifically, acted unilaterally and without authority, without the consent of the Presiding Judge or the other Judges on the Hamilton County Court of Common Pleas, over the objections of the parties, and in clear contravention of the both the Ohio Rules of Civil Procedure and local rules of the Hamilton County Court of Common Pleas regarding the process for consolidation of cases, ordered the consolidation of over 50 cases before him. In the process, Appellants were denied their due process rights for a hearing on the motions for consolidation and denied their due process rights under both the Ohio Rules of Civil Procedure and local rules of the Hamilton County Court of Common Pleas. If Appellants had been provided a hearing as required by the Civil Rules, if the proper procedure for consolidating cases had been followed or ***if the cases were not consolidated***

before the judge specifically requested by Appellees, the Appellants very well may not have a basis for an immediate appeal. The failure by the trial court to follow the mandated process and usurp the authority of the Presiding Judge in ordering the consolidation before him, the specific judge requested by appellees, creates a situation that cannot wait for the conclusion of the cases at the trial court level before an appeal is taken.

Allowing this consolidation to stand without an immediate appeal casts a pall on the fairness and equity of the entire court system in Ohio. It reeks of "judge shopping" and will encourage future litigants to attempt to manipulate the system, as was done in this case, to select a specific judge before whom a case or multiple cases will proceed. It undermines the integrity of the entire court system and casts a dark shadow over the public perception of fairness and justice. To wait until the conclusion of the litigation in the trial court will result in all involved-the Appellants, Appellees and the citizens of Hamilton County as taxpayers-to incur significant costs before attempting to right a clear wrong in how the consolidation of cases occurred. Accordingly, this case is one of great general importance because substantial injustice will result if the Consolidation Order is affirmed or let stand without affording Appellants the due process to which they are entitled.

There is little Ohio precedent on the issue of whether a grant of a motion to consolidate is a final, appealable order and one of first impression to the Ohio Supreme Court. The only case that addresses the issue, *Columbus Metro. Comm. Action Org. v. Enyart*, 10th Dist. Franklin No. 94APE12-1802, 1995 WL 422648 (July 13, 1995) concluded that the granting of a motion to consolidate does not constitute a final order upon which appeal can be taken. However, *Enyart* was decided <u>prior</u> to the 122nd General Assembly amending R.C. 2505.02, effective July 22, 1998, to be more inclusive. More importantly, the facts regarding the consolidation of the cases

is different than in *Enyart*, requiring immediate appellate scrutiny of the improper process resulting in the consolidation of this case with over 50 other cases.

The trial court's spontaneous grant of Appellees' Motion to Consolidate and Transfer has created chaos at the trial court level. Some of the trial courts have refused to relinquish the cases involving Dr. Durrani and continue to move forward in their respective cases; other courts were simply unaware of the Consolidation Order. Furthermore, the Hamilton County Clerk of Courts continues to assign judges randomly for the new cases notwithstanding the directive set forth in the Consolidation Order. In short, the trial court's non-compliance with the civil and local rules governing consolidation has resulted in disorder. Therefore, this Honorable Court should accept jurisdiction over this case to address an issue of first impression, thereby providing guidance to the lower courts on this matter.

II. STATEMENT OF THE CASE AND FACTS

Numerous Appellees have brought separate causes of action against Dr. Durrani, an orthopedic surgeon, and other Appellants for, *inter alia*, medical malpractice and other causes of action. The cases filed in Hamilton County involving Dr. Durrani were randomly assigned in accordance with Rule 36(B)(1) of the Rules of Superintendence. On January 13, 2015, Appellees filed a motion with Administrative Judge Robert E. Winkler, in most of the active Hamilton County cases involving Dr. Durrani in Hamilton County to consolidate and transfer them to the docket of Judge Robert Ruehlman. (See Trial Court Dockets). Appellants vigorously opposed the Motion to Consolidate and requested an oral hearing on the matter as is their right pursuant to Civ.R. 42(A)(1) and Hamilton County Local Rule 7(G). (See Memoranda in Opposition, filed Jan. 23, 2015). Notwithstanding these measures, by his own choosing, Judge Ruehlman issued a blanket order in nearly all of the active Hamilton County cases, including

cases which were not assigned to him, attempting to consolidate and transfer the matters to his docket. (See Order filed January 29, 2015, hereinafter "Consolidation Order", attached hereto at Appendix A-2). Judge Ruehlman issued the Consolidation Order without a hearing on the issue in contravention of Civ. R. 42(A)(1) and Hamilton County Local Rule 7(G) governing consolidation of cases.

On January 30, 2015, Appellants filed a Motion to Vacate with Administrative Judge Robert E. Winkler arguing that Judge Ruehlman's Consolidation Order was improper and denied Appellants due process of law. (See Trial Court Dockets). Although the issue was fully briefed, no ruling was entered by Administrative Judge Robert E. Winkler. *Id*.

Without any further recourse available at the trial court level, Appellants appealed the Consolidation Order to the First District Court of Appeals. Appellees moved to dismiss the appeal arguing that the First District did not have jurisdiction because an order granting a motion to consolidate is not a final, appealable order. The First District agreed with the Appellees and dismissed the appeal. (See First District Order of April 15, 2015, attached hereto as Appendix A-1.)

It is upon this Order that Appellants seek review by this Honorable Court. Given the posture of these cases, this Court should accept jurisdiction in order to determine whether the grant of a motion to consolidate is a final, appealable order and whether the procedural rules governing consolidation of cases were adhered to in these cases. The unique circumstances of these cases offer an opportunity for this Court to address an issue of first impression and rectify the impropriety that has occurred.

III. ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION OF LAW NO. 1

THE ORDER GRANTING A MOTION TO CONSOLIDATE IS A FINAL, APPEALABLE ORDER BECAUSE IT SATISFIES THE REQUIREMENTS OF R.C. 2505.02(B)(4).

The First District Court of Appeals erred in dismissing the appeal because a motion granting a motion to consolidate is a final, appealable order pursuant to R.C. 2505.02(B)(4). By operation of the Constitution of the State of Ohio, appellate courts have jurisdiction "to review and affirm, modify, or reverse judgments or final orders." Ohio Constitution, Article IV, Section 3(B)(2). R.C. 2505.02(B) delineates those matters which are subject to appeal and further provides that a final appealable order includes:

> (4) An order that grants or denies a provisional remedy and to which both of the following apply:
>
> (a) 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.
>
> (b) The appealing party would 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. 2505.02(B)(4) has been synthesized into a three-part test as follows:

> (1) the order must either grant or deny relief sought in a certain type of proceeding — a proceeding that the General Assembly calls a 'provisional remedy,' (2) the order must both determine the action with respect to the provisional remedy and prevent a judgment in favor of the appealing party with respect to the provisional remedy, and (3) the reviewing court must decide that the party appealing from the order would 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.

State v. Muncie, 91 Ohio St.3d 440, 746 N.E.2d 1092 (2001).

1. **<u>The grant of the motion to consolidate is a provisional remedy because the consolidation aids in the proceeding of the consolidated cases.</u>**

Under the first prong of the three-part test established in *Muncie, supra*, the grant of the motion to consolidate the cases is a provisional remedy as defined by R.C. 2505.02(A)(3). A "provisional remedy" is defined as "a proceeding ancillary to an action." R.C. 2505.02(A)(3). This Court has described a "provisional remedy" as "a remedy other than a claim for relief." *State ex rel. Butler Cty. Children Servs. Bd. v. Sage*, 95 Ohio St.3d 23, 25, 764 N.E.2d 1027, 1029 (2002). The list of provisional remedies set forth in R.C. 2505.02(A)(3) is "illustrative and not exhaustive." *Boedeker v. Rogers*, 140 Ohio App.3d 11, 18, 746 N.E.2d 625, 630 (8th Dist. 2000). The provisional remedy must also be ancillary to the case at issue. *See* R.C. 2505.02(A)(3). "An ancillary proceeding is one that is attendant upon or aids another proceeding." *Muncie* at 449, quoting *Bishop v. Dresser Industries, Inc.*, 134 Ohio App.3d 321, 324, 730 N.E.2d 1079 (3d Dist. 1999).

In Ohio, a number of jurisdictions have found that various orders granting motions constituted provisional remedies. *See e.g.*, *Hope Acad. Broadway Campus v. White Hat Mgmt., LLC*, 10th Dist. Franklin No. 12AP-116, 2013-Ohio-911 (motion to compel confidential, non-privileged discovery); *Lampe v. Ford Motor Co*., 9th Dist. Summit No. C.A. 19388, 2000 WL 59907 (Jan. 19, 2000) (motion to issue subpoenas under the Uniform Foreign Depositions Act); *Overhead, Inc. v. Standen Contracting*, 6th Dist. Lucas No. L-01-1397, 2002 WL 398342 (March 11, 2002) (motion enforcing contractual forum-selection clauses); *In re Estate of Sneed*, 166 Ohio App.3d 595, 2006-Ohio-1868, 852 N.E.2d 234 (6th Dist.) (motion to remove a fiduciary in probate proceedings).

Similarly an order granting consolidation of cases is a provisional remedy which, when carried out pursuant to Civ. R. 42(A)(1) and Loc. R. 7(G), is an ancillary proceeding which aids in the proceedings of the cases to be consolidated. Civ. R. 42(A)(1) provides:

> When actions involving a common question of law or fact are pending before a court, that court **after a hearing** may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the action consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(Emphasis added.)

Hamilton County Loc. R. 7(G) governs the consolidation of cases and states:

> Civil Rule 42 governs consolidation and separate trials. **Unless otherwise agreed by the judges involved, motions to consolidate shall be heard by the judge to whom the lowest numbered case is assigned and, if granted, all cases shall then go to that judge.** The case(s) going to the judge granting said motion shall be known as the SOURCE case(s). The case into which the SOURCE case(s) is/are to be consolidated shall be known as the TARGET case. In lieu of that judge's accepting a case through consolidation and returning a case under the provisions of Rule 7(C), the judge from whom a case is taken shall be assigned a new case pursuant to Rule 7(B). All filings received by the Clerk's Office post consolidation on the SOURCE case(s) shall be docketed exclusively under the TARGET case.

(Emphasis added.)

The procedural rules governing case consolidation establish that a determination of whether cases are to be consolidated requires a hearing by the judge with the lowest numbered case before the decision is made and the order is entered. Therefore, the grant of a motion for consolidation is an ancillary proceeding designed to aid in the proceeding of the cases to be consolidated. *See Muncie, supra.* Since a motion to consolidate seeks a remedy other than a claim for relief, i.e. consolidation, and aids the cases to be consolidated, an order consolidating cases is a provisional remedy. *See* R.C. 2505.02(A)(3).

2. **<u>The Consolidation Order determined the action and prevented judgment in favor of the Appellants with respect to the provisional remedy because there was no further recourse available at the trial court level.</u>**

An order satisfies the second prong of the three-part analysis established in *Muncie, supra* when "there [is] no further opportunity to petition the court for the remedy sought" and "there is nothing further to be decided with respect to the provisional remedy." *In re Special Docket No. 73958*, 115 Ohio St.3d 425, 2007-Ohio-5268, 875 N.E.2d 596, ¶29. "The trial court's order need not determine the action overall but must simply determine the action as it relates to the provisional remedy itself." *Sinnott v. Aqua-Chem, Inc*., 116 Ohio St.3d 158, 161-62, 2007-Ohio-5584, 876 N.E.2d 1217, 1222, ¶20.

The Consolidation Order meets the criteria set forth in R.C. 2505.02(B)(4)(a) because there is no further opportunity to petition the trial court with regard to the consolidation. Appellants opposed the Motion to Consolidate and, after consolidation was ordered, moved for Administrative Judge Robert E. Winkler to vacate the Consolidation Order. Additionally, a co-defendant submitted a Motion to Strike the Appellee's consolidation motion on the ground that pursuant to Civ.R. 42 and Loc.R. 7(G), only the judge to whom the lowest numbered case has been assigned can hear a motion to consolidate and receive the consolidated cases if the motion is granted. No ruling was issued on the Motion to Vacate or the Motion to Strike. Appellants have therefore exhausted every procedural remedy available regarding the Consolidation Order. This Court should accept jurisdiction in this case as the Consolidation Order has infringed upon Appellants procedural due process rights established under both the Ohio Rules of Civil Procedure and the Hamilton County Local Rules.

Additionally, there is nothing further to be decided with respect to the provisional remedy in the instant case because the Consolidation Order provided that all cases in Exhibit A would be

transferred to his docket and all future cases involving Dr. Durrani are to be assigned to him until further notice. (See Consolidation Order, attached hereto as Appendix A-2). The Consolidation Order was entered, notwithstanding the trial court's lack of proper authority to make such an order, and without the required oral hearing. Moreover, Appellees' Motion to Consolidate was filed with Administrative Judge Robert E. Winkler and not the trial court which entered the Consolidation Order; therefore, the Motion to Consolidate was not heard by the judge with the lowest case number contrary to the mandate of Loc. R. 7(G). Accordingly, there is nothing further to be decided with respect to the provisional remedy in these cases and the second prong of *Muncie* has been established.

3. <u>Appellants will not be afforded a meaningful or effective remedy by an appeal following a final judgment because a reversal at the conclusion of all of the consolidated cases will result in a waste of judicial and party resources.</u>

Appellants will not be given a meaningful or effective remedy if they must wait for a final judgment of all fifty-two consolidated cases before they may appeal the consolidation order. See R.C. 2505.02(B)(4)(b). "Whether a remedy is meaningful or effective essentially is determined by the impracticability and detrimental effect of delayed review of such a 'provisional decision.'" *Penko v. City of Eastlake*, 11th Dist. Lake No. 98-L-186, 1998 WL 1145267 (Dec. 11, 1998). To determine whether a party will be afforded a meaningful or effective remedy by an appeal following final judgment, "[t]he possibility of delayed justice must be balanced against the principals of judicial economy." *Guerriero v. Dept. of Rehabilitation and Correction*, 11th Dist. Ashtabula No. 2001-A-0062, 2002-Ohio-5149, ¶34 (Ford, J., dissenting). Trial court orders satisfy this prong when "the proverbial bell cannot be unrung." *Empower Aviation, LLC v. Butler Cty. Bd. of Commrs*., 185 Ohio App.3d 477, 482, 2009-Ohio-6331, 924 N.E.2d 862 (1st Dist.), ¶18.

The Eighth District Court of Appeals has held that a party would not be afforded a meaningful or effective remedy if an appeal were deferred until all proceedings were concluded due to resulting waste of resources. *See Boedeker*, 140 Ohio App.3d at 17, 746 N.E.2d 625. The Eighth District specifically noted that "[p]reserving resources from impending dissipation demands swift and decisive action; the opportunity to avert such waste must be seized or may be lost for good." *Id.*; *see also*, *Cleveland Housing Renewal Project, Inc. v. Wells Fargo Bank, N.A.*, 188 Ohio App.3d 36, 2010-Ohio-2351, 934 N.E.2d 372 (8th Dist.), ¶¶20-21 and *Huegmann v. VanBakel*, 12th Dist. Fayette No. CA2013-08-022, 2014-Ohio-1888, ¶24.

In the instant matter, the proverbial bell of consolidating the cases involving Dr. Durrani cannot be unrung without immediate review. If Appellants cannot obtain review of the Consolidation Order, Appellants will be forced to try over fifty cases involving Dr. Durrani to conclusion with the judge of Appellee's choosing, resulting in a waste of judicial and party resources at the appellate and trial court level if the Consolidation Order is then reversed on appeal. Such a result would not be in the interest of efficiency or justice and deny Appellants a meaningful or effective remedy following conclusion of the consolidated cases. *See Cleveland Housing, supra.* Accordingly, Appellants will only be afforded meaning and effective relief from the Consolidation Order if the same is reviewed by this Honorable Court.[1]

PROPOSITION OF LAW NO. 2

AN ORDER GRANTING A MOTION TO CONSOLIDATE IS A FINAL, APPEALABLE ORDER BECAUSE IT SATISFIES THE REQUIREMENTS OF R.C. 2505.02(B)(1).

The First District Court of Appeals erred in dismissing the appeal because the Consolidation Order is a final, appealable order pursuant to R.C. 2505.02(B)(1) as it affects a

[1] Appellants have therefore established each element of R.C. 2505.02(B)(4) in accordance with *Smith v. Chen*, Slip Opinion No. 2015-Ohio-1480.

substantial right of the Appellants in that it denies Appellants procedural due process of law protected under the United States Constitution. *See* Fourteenth Amendment, Section 1; Ohio Constitution, Article I, Section 16. R.C. 2505.02(B) provides, in pertinent part, that "[a]n order is a final order that may be reviewed, affirmed, modified, or reversed * * * when it (1) affects a substantial right in an action that in effect determines the action and prevents a judgment."

A "substantial right" means "a right that the United States Constitution, the Ohio Constitution, a statute, the common law, or a rule of procedure entitles a person to enforce or protect." R.C. 2505.02(A)(1). An order that affects a substantial right is "one which, if not immediately appealable, would foreclose appropriate relief in the future." *Circelli v. Keenan Construction*, 165 Ohio App.3d 494, 2006-Ohio-949, 847 N.E.2d 39 (10th Dist.), ¶17 quoting *Bell v. Mt. Sinai Med. Ctr.*, 67 Ohio St.3d 60, 63, 616 N.E.2d 181 (1993). Further, "[d]ue process requires that both parties have an opportunity to present arguments addressed to the trial court's exercise of this discretion before it makes a decision. *Bank One, N.A. v. Wesley*, 2d Dist. Montgomery No. 20259, 2004-Ohio-6051, ¶21. "If a trial court's failure to comply with local rules implicates issues of due process, depriving a party of a 'reasonable opportunity to defend' *** the trial court is bound to comply with its local rules." *Parra v. Continental Tire*, 9th Dist. Summit No. 26315, 2012-Ohio-4138, ¶7 quoting *Wallner v. Thorne*, 189 Ohio App.3d 161, 2010-Ohio-2146, 937 N.E.2d 1047, ¶21 (9th Dist.).

In the instant matter, the Consolidation Order was not entered in compliance with Civ. R. 42(A) or Loc. R. 7(G), usurping the function of Administrative Judge Robert E. Winkler as well as the judge with the lowest numbered active case. The Consolidation Order infringed upon Appellants' procedural due process right because, notwithstanding both parties moving to conduct oral argument on the issue and the mandate established by Civ. R. 42(A) and Loc. R.

7(G), no such hearing was held. Appellants were, and continue to be, deprived of their right to the proper adjudication of whether these cases satisfy the criteria for consolidation.

It is undisputed that Appellee filed the Motion to Consolidate with Judge Robert E. Winkler, the presiding Administrative Judge.[2] Judge Ralph Winkler was the judge presiding over the lowest numbered active case involving Dr. Durrani, *Cathy Beil v. Durrani, et al*., Case No. A13002781.[3] Pursuant to Loc. R. 7(G), the successor to Judge Ralph Winkler was the proper judge to hear Appellee's Motion to Consolidate and ultimately, preside over the consolidated cases, if granted. Despite the procedural safeguards, Judge Ruehlman ordered the consolidation and transferred the cases to his docket in violation of Civ. R. 42(A) and Loc. R. 7(G). Specifically, Judge Ruehlman did not conduct the oral hearing contemplated under the rules and was not the judge with the lowest numbered active case to be consolidated.

Judge Ruehlman's intervention and entering of the Consolidation Order undeniably deprived Appellants' right to procedural due process afforded under the United States and Ohio Constitutions and Civ. R. 42(A), thereby affecting Appellants' substantive rights. Moreover, the Consolidation Order determined the action, prevented a judgment in favor of Appellants and left Appellants with no further opportunity to petition the trial court on the issue of consolidation.[4] Accordingly, the Consolidation Order constitutes a final, appealable order under R.C. 2505.02(B)(1).

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[2] Appellees attached a proposed order to the Motion to Consolidate bearing a signature line for Judge Winkler.
[3] Judge Ralph Winkler was recently elected to the Probate Court.
[4] As stated above, Appellants filed a Motion to Vacate the Consolidation Order and a Motion to Strike the Motion to Consolidate, however, no ruling was made.

PROPOSITION OF LAW NO. 3

THE PROPER COURT TO HEAR AND DECIDE A MOTION TO CONSOLIDATE IS THE COURT WITH THE LOWEST NUMBERED ACTIVE CASE PURSUANT TO HAMILTON COUNTY LOCAL RULE 7(G).

Pursuant to Loc. R. 7(G), the proper court to decide a party's motion to consolidate and take the consolidated cases if consolidation is ordered, is the court with the lowest numbered active case. Hamilton County Loc. R. 7(G) governs the consolidation of cases and provides, in pertinent part: "[u]nless otherwise agreed by the judges involved, motions to consolidate shall be heard by the judge to whom the lowest numbered case is assigned and, if granted, all cases shall then go to that judge." Loc. R. 7(G) references Civ. R. 42 which states, in relevant part, that "[w]hen actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the action consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Civ. R. 42(A)(1).

As stated above, the cases involving Dr. Durrani were initially assigned randomly in accordance with Sup. R. 36(B)(1). Pursuant to Sup.R. 36(B)(1)(c), the individual assignment system ensures "[r]andom assignment of cases to judges of the division through an objective and impartial system that ensures the equitable distribution of cases between or among the judges of the division." The Rules of Superintendence "are designed to prevent forum-shopping." *Brickman & Sons, Inc. v. Nat'l City Bank*, 106 Ohio St.3d 30, 2005-Ohio-3559, 830 N.E.2d 1151, ¶21. Although the civil and local rules allow for the consolidation of cases in certain circumstances, such consolidation must occur in accordance with the procedural rules in order to maintain objectivity and impartiality. In this case, the manner in which the Hamilton County

cases were consolidated gives, at least, an appearance of partiality and impropriety, in contravention of the applicable rules.

In the instant matter, Appellees filed their Motion to Consolidate and Transfer cases to Judge Ruehlman in over fifty Dr. Durrani cases with a proposed order bearing a signature line for Judge Robert E. Winkler. (See Proposed Order accompanying Appellee's Motion to Consolidate filed Jan. 13, 2015). Appellees' Motion to Consolidate and Transfer was to be heard by the judge with the lowest numbered case, Judge Ralph Walker, who would then preside over all consolidated cases, if the Motion was granted, unless all of the judges agreed pursuant to Loc. R. 7(G).[5] Instead, Judge Ruehlman granted Appellees' Motion for Consolidation and transferred the cases to his docket over Appellants vigorous opposition and without consulting any other trial court judge(s). Such conduct gives the appearance of impropriety and, in effect, endorses Appellees' forum-shopping. Loc. R. 7(G) makes clear that unless otherwise agreed by the judges involved, motions to consolidate **shall be heard** by the judge to whom the lowest number case is assigned and that judge is to preside over the consolidated cases if such motion is granted. Compliance with the local rule governing consolidation is of the utmost importance to maintain the objectivity and impartiality of the judge presiding over consolidated cases, and the Consolidation Order was entered in violation of this intent.

IV. CONCLUSION

For the foregoing reasons, this Honorable Court should accept jurisdiction of the issues raised herein. These cases present a matter of great general interest because this Court has the opportunity to address an issue of first impression while simultaneously addressing an injustice

[5] There is no evidence that all of the judges agreed to consolidate the cases and transfer them to Judge Ruehlman.

at the trial court level that resulted in an appearance of impropriety and prejudice to the Appellants.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The foregoing was served by electronic mail on this 29th day of May, 2015 upon the following:

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D110252107

IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

LINDSAY WALSH

Appellee,

vs.

ABUBAKAR ATIQ DURRANI M.D. ET AL.

Appellants.

APPEAL NO. C-150143
TRIAL NO. A1403490

ENTRY GRANTING THE MOTION OF APPELLEE TO DISMISS THE APPEAL

This cause came on to be considered upon the motion of the appellee to dismiss the appeal for lack of a final appealable order.

The motion is granted. The consolidation order in this case is not a final appealable order under R.C. 2505.02. Accordingly, this Court is without jurisdiction to review the consolidation order on a direct appeal. This Court does not reach and hereby expresses no opinion with respect to the propriety of the consolidation order at this time. The appeal is hereby dismissed.

It is further Ordered that a certified copy of this judgment shall constitute the mandate to the trial court pursuant to Rule 27, Ohio Rules of Appellate Procedure.

Hendon, J., did not participate in this decision.

To The Clerk:

Enter upon the Journal of the Court on APR 15 2015 **per order of the Court.**

By: _____ **(Copy sent to counsel)**

Presiding Judge

ENTERED
APR 15 2015

APPENDIX
A-1

dis-ss4.doc

IN THE COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO
CIVIL DIVISION

JUDGE ROBERT P. RUEHLMAN
COURT OF COMMON PLEAS
HAMILTON COUNTY, OHIO

Plaintiffs, As Listed in Exhibit A,	:	Case Nc A-14-03490
Plaintiffs,	:	Judge Robert Winkler (Presiding Judge Hamilton County Court of Common Pleas)
-vs-	:	
Abubakar Atiq Durrani, M.D. et al.,	:	
Defendants.	:	

ORDER

Upon Plaintiffs Motion to Transfer and Consolidate Cases to the Docket of Judge Robert Ruehlman, said Motion is sustained. All cases from the attached Exhibit A are transferred to Judge Robert Ruehlman for his management. All current trial dates, pretrial dates and scheduling orders remain in effect until modified by Judge Ruehlman. All future Dr. Durrani cases until further ordered are to be assigned to Judge Ruehlman.

So Ordered this ____ day of January 2015.

Judge Robert Winkler

ENTERED
JAN 29 2015

D109381465

EXHIBIT A

Beth Leisring	1. A1302695	4/8/13
Cathy Beil	2. A1302781	4/10/13
Brad Arnold	3. A1302783	4/10/13
Doris Botner	4. A1302782	4/10/13
Tammy Mann	5. A1302870	4/15/13
Daniel Webber	6. A1302877	4/15/13
Chris Clark	7. A1302874	4/15/13
Sarah Mueller	8. A1302875	4/15/13
Charles Hurd	9. A1302876	4/15/13
Sierra Stratman	10. A1305127	7/25/13
George Hutchinson	11. A1305173	7/26/14
Rebecca Breitenstein	12. A1306847	10/10/13
Alissa Hightchew	13. A1306915	10/14/13
Kimberly Schmidt	14. A1307239	10/29/13
Heather Pickett	15. A1307306	10/31/13
Staci Smith	16. A1307300	10/31/13
Eric Courtney	17. A1307859	11/26/13
Brandon Mathis	18. A1307861	11/26/13

Nick Langford	19. A1307857	11/26/13
Jack Marcheschi	20. A1308383	12/23/13
Lynne List	21. A1308494	12/31/13
Kevin Schmit	22. A1400009	1/2/14
Amanda Ayres	23. A1400578	1/31/14
Tiffany Messerschmidt	24. A1400579	1/31/14
Scott Daniel	25. A1400577	1/31/14
Brandon Lacinak	26. A1400586	1/31/14
Karen Crissinger	27. A1400584	1/31/14
Kathryn Curley	28. A1400583	1/31/14
Carla Greissman	29. A1400624	2/3/14
Jacob Cotter	30. A1401186	2/27/14
Hillary Levandofsky	31. A1401181	2/27/14
Troy Beckelheimer	32. A1401185	2/27/14
Patrick Calligan	33. A1401182	2/27/14
Brandon Schoborg	34. A1401289	3/4/14
Kevin McDonald	35. A1401890	4/1/14
Samantha Mink	36. A1401893	4/1/14
Corry Wright	37. A1402534	4/29/14

Robert James Houghton, II	38. A1402536	4/29/14
Jimmy Allen	39. A1402537	4/29/14
Laura Aker	40. A1402757	5/9/14
Charles Nelson	41. A1402760	5/9/14
Helen Ward	42. A1402762	5/9/14
Timothy Byrd	43. A1402938	5/19/14
Alex Taylor	44. A1402940	5/19/14
Christina & Joe Rutter for Carson Rutter	45. A1402941	5/19/14
Anthony Bode	46. A1402942	5/19/14
Joshua Ault	47. A1403072	5/28/14
Emanuel Wyatt	48. A1403073	5/28/14
Trey Billing	49. A1403074	5/28/14
Amber Johnson	50. A1403174	5/30/14
Shamyia Ford	51. A1402763	5/9/14
Michelle Beavan	52. A14 02758	5/9/14
Jacob Wade Durham	53. A1403361	6/9/14
Sydney Jones	54. A1403363	6/9/14
Asia Shannon	55. A1403365	6/9/14
Ruth Sears	56. A1403488	6/12/14

Brenda & Michael Butler	57. A1403489	6/12/14
Lindsay Walsh	58. A1403490	6/12/14
Daniel & Shirley Webber	59. A1403644	6/19/14
Minuet Healy	60. A1403757	6/25/14
Troy & Emily Beckelhimer	61. A1404075	7/11/14
Frieda Aaron, et al	62. A1407453	12/23/14
Gayle Bachman, et al	1. A1407541	12/30/14