

COPY

STATE OF OHIO

IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT

COUNTY OF SUMMIT

COURT OF APPEALS
2015 AUG -6 AM 11:24

JESSICA JACOBSON

C.A. No. 26915

Appellant

SUMMIT COUNTY
CLERK OF COURT

v.

ELLEN KAFOREY, et al.

Appellees

JOURNAL ENTRY

Appellees Cleveland Clinic Children's Hospital for Rehabilitation, Ellen Kaforey, and Akron Children's Hospital ("Appellees") have moved this Court to certify a conflict under App.R. 25 between this Court's June 30, 2015 decision holding that the current version of R.C. 2307.60 independently authorizes a civil action for damages from violations of criminal acts and the following cases: *Groves v. Groves*, 10th Dist. Franklin No. 09AP-1107, 2010-Ohio-4515, *Edwards v. Madison Twp.*, 10th Dist. Franklin No. 97APE06-819, 1997 WL 746415 (Nov. 25, 1997); *McNichols v. Rennicker*, 5th Dist. Tuscarawas No. 2002 AP 04 0026, 2002-Ohio-7215; *Applegate v. Weadock*, 3rd Dist. Auglaize No. 2-95-24, 1995 WL 705214 (Nov. 30, 1995); *Peterson v. Scott Constr. Co.*, 5 Ohio App.3d 203 (6th Dist.1982); and *Schmidt v. State Aerial Farm Statistics, Inc.*, 62 Ohio App.2d 48 (6th Dist.1978).¹

Article IV, Section 3(B)(4) of the Ohio Constitution requires this Court to certify the record of the case to the Ohio Supreme Court whenever the "judgment * * * is in conflict with the judgment pronounced upon the same question by any other court of

¹ We note that the Cleveland Clinic Children's Hospital for Rehabilitation and Ms. Kaforey do not list *Edwards* or *Schmidt* as conflict cases.

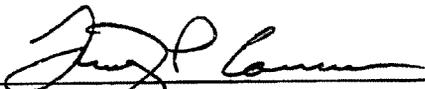
appeals in the state[.]” “[T]he alleged conflict must be on a rule of law – not facts.”

Whitelock v. Gilbane Bldg. Co., 66 Ohio St.3d 594, 596 (1993).

Upon review, we conclude that a conflict exists between this Court’s judgment and the judgments in *Groves v. Groves*, 10th Dist. Franklin No. 09AP-1107, 2010-Ohio-4515, *Edwards v. Madison Twp.*, 10th Dist. Franklin No. 97APE06-819, 1997 WL 746415 (Nov. 25, 1997), *McNichols v. Rennicker*, 5th Dist. Tuscarawas No. 2002 AP 04 0026, 2002-Ohio-7215, and *Applegate v. Weadock*, 3rd Dist. Auglaize No. 2-95-24, 1995 WL 705214 (Nov. 30, 1995).

Further, given that there is also language in other recent cases that could be read to suggest that the current version of R.C. 2307.60 independently authorizes a civil action for damages caused by criminal acts, *see, e.g., Cartwright v. Batner*, 2d. Dist. Montgomery No. 25938, 2014-Ohio-2995, ¶ 88-97, we conclude [t]he conflict in these cases should be resolved. Accordingly, we certify the following question:

Does the current version of R.C. 2307.60 independently authorize a civil action for damages caused by criminal acts, unless otherwise prohibited by law?



Judge Timothy P. Cannon

Concur:
Carr, P.J.
Moore, J.

(Cannon, J., of the Eleventh District Court of Appeals, sitting by assignment.)