

IN THE SUPREME COURT OF OHIO

CASE NO. 2015-1127

ON APPEAL FROM
THE EIGHTH DISTRICT COURT OF APPEALS
CUYAHOGA COUNTY, OHIO
CASE NO. CA 14 102038

DARLENE BURNHAM

Plaintiff-Appellee,

-vs-

CLEVELAND CLINIC, et al.

Defendants-Appellants.

**MOTION FOR EXTENSION OF TIME ON BEHALF OF DEFENDANTS-
APPELLANTS CLEVELAND CLINIC AND CLEVELAND CLINIC
HEALTH SYSTEM**

Bret C. Perry, Esq. (0073488)
Jason A. Paskan, Esq. (0085007)
Bonezzi Switzer Murphy Polito
& Hupp Co LPA
1300 East 9th Street, Suite 1950
Cleveland, Ohio 44114
Tel: (216) 875-2767
Fax: (216) 875-1570
E-mail: bperry@bsmph.com
jpaskan@bsmph.com

Alexander L. Pal, Esq. (0085100)
Obral, Silk & Associates
55 Public Square, Suite 1700
Cleveland, Ohio 44113
Tel: (216) 696-4421
Fax: (216) 696-3228
E-Mail: apal@lawmjo.com

Attorney for Plaintiff-Appellee
Darlene Burnham

Attorneys for Defendants-Appellants
Cleveland Clinic and Cleveland Clinic
Health System

Anne Marie Sferra, Esq. (0030855)
Bricker & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215
Tel: (614) 227-2394
Fax: (614) 227-2390
sean.mcglone@ohiohospitals.org
E-mail: asferra@bricker.com

Attorney for Amici Curiae Ohio
Hospital Association and Ohio
State Medical Association

Martin T. Galvin, Esq. (0063624)
Reminger Co., LPA
101 West Prospect Avenue, Suite 1400
Cleveland, Ohio 44115
Tel: (216) 687-1311
Fax: (216) 687-1841
E-mail: mgalvin@reminger.com

Attorney for Amicus Curiae The
Academy of Medicine of Cleveland
& Northern Ohio

Sean McGlone, Esq. (0075698)
155 East Broad Street, Suite 301
Columbus, Ohio 43215
Tel: (614) 221-7614
Fax: (614) 917-2258
E-mail:

Counsel for Amicus Curiae Ohio
Hospital Association

Pursuant to S. Ct. Prac. R. 3.03(B)(2), Defendants-Appellants, Cleveland Clinic and Cleveland Clinic Health System (hereinafter, "Appellants"), hereby move this Honorable Court for a twenty (20) day extension of time to file their Merit Brief in this case.

Appellants submit that additional time in this case is necessary due to the unique interpretation of and the significant public interest in this matter, specifically with regard to the availability of an interlocutory appeal when the compelled disclosure of attorney-client communication is at issue. Appellants attempted to enter into a stipulation with Plaintiff-Appellee, however, Plaintiff-Appellee was unwilling to agree to the same. (See Exhibit "A" attached hereto).

In addition to the overarching ramifications that this case will have on Ohio litigants, counsel for Appellants has been preparing for and will engage in expert discovery in the matter of *Carolyn Kennat v. Pleasant Lake Villa, et al.*, Cuyahoga County Court of Common Pleas Case No. CV 15 841265, a wrongful death cause of action in which experts in gastroenterology, infectious disease and nursing have been retained by the parties. Notably, a number of the experts are out-of-state and/or will require travel significant time in addition to the time that will be required to adequately prepare for, defend and conduct the respective experts' depositions.

Appellants request that an additional twenty (20) days be granted to file their Merit Brief in this case, thereby requiring Appellants' Merit Brief to be filed on or before March 7, 2016. Appellants have not requested any prior extensions of time as to the filing of their Merit Brief. (See Court's Docket).

Accordingly, having demonstrated the requisite good cause set forth in S. Ct. Prac. R. 3.03(B), Appellants Cleveland Clinic and Cleveland Clinic Health System request that this Honorable Court enter an Order granting a twenty (20) day extension of time to file Appellants' Merit Brief, thereby permitting Appellants until on or before March 7, 2016 to file the same.

Respectfully submitted,

/s/ *Bret C. Perry*

Bret C. Perry, Esq. (0073488)

Counsel of Record

Jason A. Paskan, Esq. (0085007)

Bonezzi Switzer Polito & Hupp Co LPA

1300 East 9th Street, Suite 1950

Cleveland, Ohio 44114

Tel: (216) 875-2767

Fax: (216) 875-1570

E-mail: bperry@bsphlaw.com

jpaskan@bsmhlaw.com

Attorneys for Defendants-Appellants
Cleveland Clinic and Cleveland Clinic
Health System

CERTIFICATE OF SERVICE

A copy of the foregoing was served by Regular U.S. Mail on this 26th day of

January, 2016 to the following:

Alexander Pal, Esq.
Obral Silk & Associates
55 Public Square, Suite 1700
Cleveland, Ohio 44113

Counsel for Plaintiff-Appellee
Darlene Burnham

Anne Marie Sferra, Esq.
Bricker & Eckler, LLP
100 South Third Street
Columbus, Ohio 43215

Counsel for Amici Curiae
Ohio Hospital Association and
Ohio State Medical Association

Sean McGlone, Esq.
155 East Broad Street, Suite 301
Columbus, Ohio 43215

Counsel for Amicus Curiae
Ohio Hospital Association

Martin T. Galvin, Esq.
Reminger Co., LPA
101 West Prospect Avenue
Suite 1400
Cleveland, Ohio 44115

Counsel for Amicus Curiae
The Academy of Medicine of Cleveland and
Northern Ohio

/s/ *Bret C. Perry*

Bret C. Perry, Esq. (0073488)

Counsel of Record

Jason A. Paskan, Esq. (0085007)

Jason A. Paskan

From: Alexander Pal <APal@216lawyers.com>
Sent: Monday, January 25, 2016 4:32 PM
To: Jason A. Paskan
Subject: Re: Burnham v. Cleveland Clinic (BSPH File No. 240484)

Jason,

I am unable to enter into a stipulation for an extension of time. Please don't hesitate to contact me should you have any further questions.

Al Pal

Sent from my iPhone

On Jan 25, 2016, at 4:19 PM, Jason A. Paskan <JPaskan@bsphlaw.com> wrote:

Al:

I hope you had a relaxing weekend. I had a chance to speak with my client this morning and they are unwilling to agree to the restriction that you have placed on our request for a mutual extension of time to file our respective briefs and they are not in a position to make an offer while this matter is pending in the Supreme Court.

If you have changed your mind as to the IME issue and will enter into the stipulated extension at this time without any type of restriction, please let me know and I will get the same drafted for your review. If you have any other questions or concerns, please do not hesitate to contact me.

Sincerely,

Jason A. Paskan, Esq.
Associate

<image003.jpg>

CONFIDENTIAL COMMUNICATION

This electronic transmission and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to who it is addressed. If you are not the intended recipient or the person responsible for delivering this document to the intended recipient, please be advised that you have received this transmission in error and that any use, dissemination, forwarding, printing or copying of this document and any files transmitted with this is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone at 216.875.2767 or by email to info@bsphlaw.com. Please shred this document and its attachments and do not retain any copies. You will be reimbursed for reasonable costs incurred in notifying us.