

[Cite as *Bauer v. Hamilton*, 2010-Ohio-2664.]

COURT OF APPEALS  
FAIRFIELD COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

MARTHA R. BAUER, ET AL.

Plaintiffs-Appellants

-vs-

CELESTE C. HAMILTON, ET AL.

Defendants-Appellees

JUDGES:

Hon. William B. Hoffman, P.J.

Hon. Sheila G. Farmer, J.

Hon. John W. Wise, J.

Case No. 09CA0053

OPINION

CHARACTER OF PROCEEDING:

Appeal from the Court of Common Pleas,  
Case No. 00CV244

JUDGMENT:

Affirmed/Reversed in Part & Remanded

DATE OF JUDGMENT ENTRY:

June 10, 2010

APPEARANCES:

For Plaintiffs-Appellants

MARTHA R. BAUER, PRO SE  
CHARLES W. BAUER, PRO SE  
227 S.W. 31st Avenue  
Cape Coral, FL 33991

For Appellee State Farm

BARRY W. LITTRELL  
PATRICIA A. BOYER  
471 East Broad Street, 19<sup>th</sup> Floor  
Columbus, OH 43215-3872

For Appellee Celeste Hamilton

THOMAS J. DOWNS  
280 North High Street, Suite 810  
Columbus, OH 43215

For Appellee Melanie Thraen

DAVID J. HEINLEIN  
140 East Town Street, Suite 1015  
Columbus, OH 43215

*Farmer, J.*

{¶1} On May 15, 2000, appellants, Martha and Charles Bauer, filed a complaint against appellees, Celeste and James Hamilton, Melanie Thraen, State Farm Mutual Automobile Insurance Company, and Mail Handlers Benefit Plan. The complaint against appellees Hamilton stemmed from a motor vehicle accident on January 26, 1999; the claims against appellee Thraen stemmed from a second motor vehicle accident on March 17, 1999.

{¶2} On August 5, 2009, the trial court dismissed the complaint with prejudice for discovery violations committed by appellants.

{¶3} Appellants filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶4} "THE TRIAL COURT ERRED IN PERMITTING DEFENDANTS CELESTE HAMILTON AND MELANIE THRAEN TO CONDUCT DISCOVERY AFTER THE DISCOVERY CUT-OFF DATE OF FEBRUARY 29, 2008; AND FURTHER ERRED IN PERMITTING DEFENDANT THRAEN TO CONDUCT DISCOVERY AFTER THE AMENDED DISCOVERY CUT-OFF DATE OF APRIL 30, 2009, IN ACCORDANCE TO THE TRIAL COURT'S ENTRY OF APRIL 3, 2009, WHILE THE TRIAL COURT ERRONEOUSLY STRUCK PLAINTIFFS' THIRD REQUEST FOR PRODUCTION OF DOCUMENTS PROPOUNDED UPON DEFENDANTS ON OCTOBER 4, 2008; AND THUS PRECLUDING PLAINTIFFS FROM CONDUCTING DISCOVERY FROM FEBRUARY 29, 2008 THROUGH APRIL 3, 2009."

II

{¶5} "THE TRIAL COURT ERRED IN DENYING PLAINTIFFS' SECOND AND THIRD MOTIONS TO COMPEL DEFENDANTS CELESTE HAMILTON, MELANIE THRAEN, AND STATE FARM TO PRODUCE DOCUMENTS, TO PLAINTIFFS' DETRIMENT."

III

{¶6} "THE TRIAL COURT ERRED WHEN IT PROHIBITED THE FILING OF ANY MOTIONS FOR RECONSIDERATION FROM ITS ENTRIES, TO PLAINTIFFS' DETRIMENT."

IV

{¶7} "THE TRIAL COURT ERRED IN NOT AWARDING EXPENSES AND COSTS TO PLAINTIFF CHARLES BAUER FOR THE NON-TAKING OF HIS DEPOSITION, PURSUANT TO CIVIL RULE 30 AND RULE 30(G)(1)."

V

{¶8} "THE TRIAL COURT ERRED IN DISMISSING PLAINTIFFS' COMPLAINT WITH PREJUDICE ON AUGUST 5, 2009 FOR PLAINTIFF MARTHA BAUER'S FAILURE TO EXECUTE THE CINCINNATI INSURANCE COMPANY'S [NON-PARTY] AUTHORIZATION FOR RELEASE OF INFORMATION FORM, UNALTERED, PURSUANT TO R.C. §2317.02, INCLUDING, R.C. §2317.02(B), R.C. §2317.02(B)(1)(a)(i); R.C. §2317.02(B)(1)(a)(iii); R.C. §2317.02(B)(2); R.C. §149.43(A)(1)(a); R.C. §2505.02(B)(2); THE PUBLIC RECORDS ACT; THE HEALTH INFORMATION PORTABILITY AND ACCOUNTABILITY ACT ('HIPPA') OF 1974; THE PRIVACY ACT OF 1996, R.C. §1347.109(A); THE STATE FREEDOM OF

INFORMATION ACT; THE CONSTITUTIONS OF THE STATE OF OHIO AND FLORIDA; AND THE CONSTITUTION OF THE UNITED STATES, INCLUDING DUE PROCESS."

VI

{¶9} "THE TRIAL COURT VIOLATED PLAINTIFFS' INVASION OF PRIVACY, AND AN OPPORTUNITY TO BE HEARD, WHEN THE TRIAL COURT DISMISSED THE PLAINTIFFS' COMPLAINT ON AUGUST 5, 2009, UPON ITS OWN MOTION."

VII

{¶10} "THE TRIAL COURT'S APRIL 3, 2009 ENTRY WAS AMBIGUOUS."

VIII

{¶11} "THE TRIAL COURT ERRED IN ITS ENTRY OF JULY 7, 2009, OR THE SAME DAY AS IT CLARIFIED ITS APRIL 3, 2009 ENTRY, IN AWARDING SANCTIONS TO DEFENDANT MELANIE THRAEN, AGAINST BOTH PLAINTIFFS, IN THE AMOUNT OF \$3,615.00, FOR THE FAILURE OF MRS. BAUER'S REFUSAL TO EXECUTE AN UNALTERED AUTHORIZATION FOR RELEASE OF INFORMATION FORM FROM THE CINCINNATI INSURANCE COMPANY, A NON-PARTY TO THIS LAWSUIT."

IX

{¶12} "THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR RELIEF; VACATE COURT'S ENTRY DATED JULY 6, 2009; AND MOTION STAY FROM EXECUTING THE CINCINNATI INSURANCE COMPANY'S FORM."

X

{¶13} "THE TRIAL COURT ERRED IN PROHIBITING THE DEFENDANTS TO SAFEGUARD AGAINST THE DISCLOSURE OF PLAINTIFFS' SOCIAL SECURITY NUMBERS."

{¶14} Appellants' assignments of error and issues presented for review can be categorized into three main legal issues: 1) procedural issues (Assignments of Error I and III, Issues Presented 2, 3, 7, 17, 18, 20); 2) discovery issues (Assignments of Error II, IV, X, Issues Presented 9, 16); and 3) dismissal order issues (Assignments of Error V through X, Issues Presented 1, 4, 5, 6, 8, 10 through 15, 19).

{¶15} We will discuss Assignments of Error V, VI, VII, VIII, IX, and X first as they are dispositive of the case.

V, VI, VII, VIII, IX, X

{¶16} Appellants claim the trial court erred in dismissing the case with prejudice pursuant to Civ.R. 41(B)(1) and Civ.R. 37(B)(2)(c) because the requested discovery had previously been provided, the original release provided was ambiguous (Exhibit F), and the alternative release provided was sufficient to afford appellees the discoverable information requested.

{¶17} Civ.R. 41 governs dismissal of actions. Subsection (B)(1) states the following:

{¶18} **"(B) Involuntary dismissal: effect thereof**

{¶19} "(1) *Failure to prosecute.* Where the plaintiff fails to prosecute, or comply with these rules or any court order, the court upon motion of a defendant or on its own motion may, after notice to the plaintiff's counsel, dismiss an action or claim."

{¶20} Civ.R. 37 governs failure to make discovery. Subsection (B)(2)(c) states the following:

{¶21} "**(B) Failure to comply with order**

{¶22} "(2) If any party or an officer, director, or managing agent of a party or a person designated under Rule 30(B)(5) or Rule 31(A) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (A) of this rule and Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:

{¶23} "(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party."

{¶24} In *Ohio Furniture Company v. Mindala* (1986), 22 Ohio St.3d 99, 101, the Supreme Court of Ohio held the following:

{¶25} "We hold that the notice requirement of Civ.R. 41(B)(1) applies to *all* dismissals with prejudice, including those entered pursuant to Civ.R. 37(B)(2)(c) for failure to comply with discovery orders. A dismissal on the merits is a harsh remedy that calls for the due process guarantee of prior notice.

{¶26} "Accordingly, the two rules should be read *in pari materia* with regard to dismissals with prejudice.

{¶27} "This holding stems from and reflects 'a basic tenet of Ohio jurisprudence that cases should be decided on their merits.' *Perotti v. Ferguson* (1983), 7 Ohio St.3d 1, 3, 454 N.E.2d 951. Notice of intention to dismiss with prejudice gives the non-complying party one last chance to obey the court order in full. The moving party

should not be allowed to circumvent this protection by simply framing his motion in terms of a Civ.R. 37 sanction. Nor should a trial court on its own motion dismiss on the merits without prior notice."

{¶28} This case has a long procedural history encompassing some 370 docketed entries during nearly nine years.

{¶29} The parties initially pursued depositions and other discovery avenues from May 10, 2001 to June 19, 2001. Then the matter was stayed indefinitely by the trial court due to appellants' bankruptcy proceedings. See, Judgment Entry filed June 19, 2001. On September 28, 2007, the stay was lifted and the case was returned to the active docket. A status conference and scheduling order was filed on November 9, 2007, listing a discovery completion date of February 29, 2008. At appellees' request, the scheduling order was amended on January 2, 2008, extending their disclosure of expert date from December 31, 2007 to February 8, 2008. Again, the scheduling order was modified on February 22, 2008, extending the date for taking depositions to February 29, 2008. During the course of scheduling appellants' depositions, appellants filed motions to compel on March 10, 2008 against all appellees, requesting that all of their medical records originally provided some seven to eight years hence be copied for their use:

{¶30} "Further, Mrs. Bauer's medical providers in the State of Ohio recently advised the Bauers that medical facilities are required to only maintain patient records for five (5) years. Thus, most of Mrs. Bauer's medical files have been destroyed.

{¶31} "Defendant Thraen is indeed in possession and control of Mrs. Bauer's medical records, including the itemized billing statements, as Plaintiffs provided this

information to the Defendant during previous discovery exchange. Further, to properly evaluate Plaintiffs' claims, Mrs. Bauer provided the documents to Defendant Thraen's insurance carrier during settlement negotiations before the bringing of this lawsuit against the Defendant. Thus, the documents requested in Plaintiffs' Second Request for Production of Documents are patently in Defendant Thraen's possession and control.

{¶32} "WHEREFORE, Plaintiffs Martha R. Bauer and Charles Bauer, respectfully move this Court to compel Defendant Melanie Thraen to produce all documents, at Defendant's cost, responsive to Plaintiffs' Second Request for Production of Documents as mentioned above, together with an award for attorney fees in defending this Motion\*\*\*."<sup>1</sup>

{¶33} On April 10, 2008, appellee Thraen filed a motion to compel, requesting that the trial court issue an order compelling appellant Martha Bauer to sign medical releases. Appellee Thraen explained that appellant Martha Bauer refused to sign the forms, as she continuously objected to the form of the medical releases. Appellee Thraen moved for sanctions for appellant Martha Bauer's "continued failure to reasonably cooperate in discovery matters."

{¶34} Appellants filed their memorandum contra on April 24, 2008, arguing appellee Thraen's motion was filed beyond the discovery cut-off date, and objecting to the inclusion of the term "all records" in the medical release forms, in so far as R.C. 2317.02(B)(2) only mandates the release of medical records causally related to the

---

<sup>1</sup>The motion filed against appellees Hamilton was nearly identical, but included the statement that appellants "provided counsel with over nine (9) blanket medical authorizations during the initial discovery requests in 2000, as referenced above."

claim. By order filed July 1, 2008, the trial court denied appellants' March 10, 2008 motion to compel, and further ordered **"that no further pleadings, motions or supplements shall be filed by any party or counsel until further order of the Court."**

{¶35} On October 30, 2008, appellee Thraen again filed a motion to compel, stating the same arguments as in the April 10, 2008 motion. Appellants filed a memorandum contra on November 6, 2008, again stating the same arguments in their April 24, 2008 response. By entry filed March 13, 2009, the trial court denied appellee Thraen's October 30, 2008 motion to compel, finding she did not have leave of court to file such a motion.

{¶36} Then, on April 3, 2009, the trial court filed an entry granting appellee Thraen's October 30, 2008 motion to compel the medical releases:

{¶37} "\*\*\*\*The Bauers argue that the Court lifted its prior prohibition of filing motions on September 11, 2008, thus the Bauers' motion was properly before the Court. The Court agrees.

{¶38} "The Court erred when it did not recall lifting the prohibition within a parenthetical sentence in a scheduling Entry, filed September 11, 2008. Thus, the Bauers' motion was properly before the Court, as was Thraen's motion to compel. Again, the Court will overrule the Bauers' motion for reconsideration on its merits. Regarding Thraen's motion to compel, the Court will sustain it. Martha Bauer's medical history is relevant to the pending case.

{¶39} "Therefore, the Court **SUSTAINS** the Bauer's construed motion for reconsideration. The Court **OVERRULES** the Bauers' October 27, 2008 motion for reconsideration and **SUSTAINS** Thraen's October 30, 3008 (sic) motion to compel."

{¶40} The trial court went on to order the following:

{¶41} "Defendant Martha Bauer has 14 days from the date of this Entry to authorize the release of her medical records and comply with any discovery already propounded upon her related to her medical records. **FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN THE DISMISSAL OF THE PLAINTIFF'S COMPLAINT WITH PREJUDICE.**"

{¶42} In the same entry, the trial court extended discovery until April 30, 2009.

{¶43} Appellants argue the denial and sua sponte granting of the motion to compel denied them the right to be heard. However, the record establishes that appellants filed responses to the motion on April 24, and November 6, 2008.

{¶44} On April 17, 2009, appellants filed a notice of compliance with appellee Thraen's March 31, 2009 motion to compel to obtain medical releases. Attached to their notice were four Authorizations for Release of Information, Exhibits A–D, wherein appellants added the following language in bold to the releases:

{¶45} "The following information may be released or reviewed:

{¶46} "(X) Dates of treatment **ALL RECORDS relating to the January 26, 1999 and March 17, 1999 automobile accidents for injuries to the eyes, left leg, back, head, shoulders, and teeth ONLY – no other nonrelated medical documents are to be provided; i.e., gynecology records, etc.**"

{¶47} We note these exhibits appear to be originals and are attached to the notice and included in the file. There is no proof that these releases were supplied separately to opposing counsel. These releases were executed on April 14, 2009, within the trial court's fourteen day compliance order of April 3, 2009.

{¶48} On June 22, 2009, appellants filed a motion for protective order concerning appellees' attempts to obtain her medical records. Appellants argued appellees' were seeking records after the discovery cut-off date of April 30, 2009, and the requested records were outside the release as appellees obtained gynecology records dating back to 1979. By entry filed July 6, 2009, the trial court overruled appellants' motion, finding the following:

{¶49} "On May 6, 2009; June 6, 2009; and June 15, 2009, Defendants attempted to obtain the medical records of Martha Bauer from various medical providers. The Bauers became aware of these attempts and filed the instant motion for a protective order. The Bauers complain that there were defects with Defendants' subpoenae (sic) and Defendants were attempting to obtain medical records beyond the discovery cut-off date of April 30, 2009. The Bauers request the Court issue a protective order prohibiting Defendants and their counsel from attempting to obtain any of Martha Bauer's medical records, prohibiting Defendants from releasing Martha Bauer's social security number to achieve the same, and prohibiting Defendants from using Martha Bauer's medical records obtained after April 30, 2009.

{¶50} "Defendant Melanie Thraen ('Thraen') argues that the Court specifically authorized Defendants' obtainment of Martha Bauer's medical records in its April 3, 2009 Entry. Additionally, Thraen submits that Martha Bauer altered the attached

medical release authorization form and restricted the records that may be released. Thraen requests either a clarification of the Court's Entry of April 3, 2009 that explains Martha Bauer is to release all of her medical records or a new entry to that effect.

{¶51} \*\*\*\*

{¶52} "The extended discovery cut-off date of April 30, 2009 **DOES NOT** apply to Defendants obtaining Martha Bauer's medical records. On April 3, 2009, the Court specifically ordered Martha Bauer to authorize the release of her medical records and comply with any discovery already propounded upon her that related to her medical records. The Bauers may not now wield the cut-off date as a sword to prevent Defendants from obtaining the records the Court specifically ordered Martha Bauer to release.

{¶53} \*\*\*\*

{¶54} "It should have gone without saying that if Defendants presented a blanket medical release form with their motion to compel of October 30, 2008, and the Court sustained such motion and ordered Martha Bauer to authorize the release of her medical records, then Martha Bauer should have signed an **unaltered** copy of the release. The relevant portion of the original medical release form is as follows:

{¶55} [Form language is cited by the trial court, but omitted herein, except for the following relevant portion:]

{¶56} "(X) Dates of Treatment **ALL RECORDS**

{¶57} "Martha Bauer, however, signed and returned a medical release form, the same portion of which is as follows (attached to the Bauers' motion for protective order as part of exhibits K and L):

{¶58} [Form language is cited by the trial court, but omitted herein, as the altered language is cited supra in bold.]

{¶59} "Obviously, the medical release form was altered and language was added that restricted the scope of the records to be released.

{¶60} \*\*\*\*

{¶61} "It is appalling that when the Court sustained Thraen's motion to compel and did not side with the Bauers, the Bauers circumvented the Court's ruling and altered the medical release form. The alteration essentially satisfied the Bauers' complaints and limited the medical release, specifically excepting gynecological records.

{¶62} [FN3: "The fact that Defendants did not immediately bring this alteration to the Court's attention does not, in any way, ratify the Bauers' actions.]

{¶63} "The Bauers had no authority, whatsoever, to unilaterally alter the medical release form. The Court explicitly stated that Martha Bauer's medical records were relevant, which implied they were **all** relevant, not just the records of the Bauers' choosing. Because the Bauers did not execute an unaltered medical release form, the Bauers have not fully complied with the Court's order of April 3, 2009.

{¶64} \*\*\*\*

{¶65} "The Court informed the Bauers in its Entry of April 3, 2009 that failure to comply with the Court's order to release Martha Bauer's medical records could result in the Bauers' case being dismissed with prejudice. The Court, however, adopts a less severe sanction.

{¶66} \*\*\*\*

{¶67} "Here, the Court finds that the Bauers are to be responsible for any and all expenses incurred by Thraen relating to obtaining Martha Bauer's medical records after the Court's April 3, 2009 Entry. This includes attorney's fees.

{¶68} "Therefore, for the foregoing reasons, the Court **VERRULES** the Bauers' motion for a protective order. The Court **ORDERS** Plaintiff Martha Bauer to execute an unaltered copy of the medical release form attached to this Entry and submit it to Defendant's within 14 days of the date of this Entry, or face additional sanctions. **FAILURE TO COMPLY WITH THIS ORDER MAY RESULT IN PLAINTIFFS' COMPLAINT BEING DISMISSED WITH PREJUDICE.\*\*\***"

{¶69} Despite this order, appellant Martha Bauer did not sign an unaltered medical release. Instead, on July 20, 2009, appellants filed a motion for relief and to vacate the trial court's July 6, 2009 order. By entry filed July 21, 2009, the trial court, on its own motion, determined the following:

{¶70} "On April 3, 2009, the Court prohibited parties from filing motions for reconsideration, or the equivalent,\*\*\* and ordered Martha Bauer to execute the medical release form that Defendants had previously provided her. On July 6, 2009, the Court explained how Martha Bauer had failed to comply with the April 3, 2009 order and again ordered her to execute the medical release form,\*\*\* which she has not done. Then, on July 20, 2009, the Bauers filed the equivalent of a motion for reconsideration. The Court has reminded the Bauers at **every** step of the way that failure to comply with its orders may result in the Court dismissing their claims with prejudice.

{¶71} "Accordingly, the Court gives notice of its intent to dismiss the Bauers' action **with prejudice** in ten days for failing to comply with previous court orders. Parties may respond to this notice before then." (Footnotes omitted.)

{¶72} On July 29, 2009, appellants filed a response to this order, requesting the trial court not to dismiss the complaint, and a motion seeking a ruling on their July 20, 2009 motion for relief and to vacate the trial court's July 6, 2009 order.

{¶73} By entry filed August 5, 2009, the trial court again reviewed the procedural history of the medical authorization/discovery issues in the case and dismissed appellants' complaint with prejudice:

{¶74} "A brief review of the docket of this case reveals its drawn-out-history. This case has been pending for over nine years.\*\*\*

{¶75} "Further, Martha Bauer has done more than fail to respond to discovery until threatened with dismissal. She has failed to follow the Court's orders regarding discovery **after** being threatened with dismissal.

{¶76} "Finally, the Bauers jointly failed to comply with Court orders. Though not entirely dilatory, the Bauers have certainly displayed contumacy.

{¶77} "Every step of the way, the Court clearly explained that failing to comply with its orders may result in a dismissal with prejudice. Even after delineating the Bauers' specific violations and giving them an opportunity to remedy these defaults, the Bauers did not do so. Instead, the Bauers have contumaciously defied this Court's orders.

{¶78} "Therefore, for the foregoing reasons, the Court **DISMISSES WITH PREJUDICE** the Bauers' Complaint." (Footnote omitted.)

{¶79} As noted supra, appellants argue appellees had the requested medical records as provided to them prior to the stay. We fail to find that the record substantiates this argument. Appellees had an interest in determining what ongoing treatments were the subject of this action. Some ten years had lapsed since the accidents. Appellants' May 15, 2000 complaint at ¶10 avers to a permanent disability.

{¶80} Appellants also argue the original release provided was ambiguous and their alternative release was lawful. The trial court's numerous entries addressed the fact that these defenses were not appropriate. What truly distinguishes appellants' position is that some medical information received may not be germane to the injuries sustained. However once disclosed, the issue becomes one of admissibility and relevance.

{¶81} Given the facts presented and the trial court's painstaking efforts to give appellants three chances to obey the order, we find the trial court did not err in dismissing appellants' complaint and ordering sanctions.

{¶82} Assignments of Error V, VI, VII, VIII, IX, and X are denied.

I, II, III, IV

{¶83} The remaining assignments of error center around discovery/procedural issues.

{¶84} All of the issues are subject to an abuse of discretion standard. *Nakoff v. Fairview General Hospital*, 75 Ohio St.3d 254, 1996-Ohio-159. In order to find an abuse of discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983) 5 Ohio St.3d 217.

{¶85} Given our affirmance of the dismissal for failure to provide the medical releases as ordered by the trial court, we find Assignments of Error I, II, and III to be moot.

{¶86} Assignment of Error IV claims that appellants are entitled to fees and expenses for the attendance of appellant Charles Bauer at his own deposition. It is conceded that appellant Charles Bauer appeared, but was not deposed then or at any subsequent time.

{¶87} Civ.R. 30 governs depositions upon oral examination. Subsection (G)(1) states the following:

{¶88} "If the party giving the notice of the taking of a deposition fails to attend and proceed with the deposition and another party attends in person or by attorney pursuant to the notice, the court may order the party giving the notice to pay to the other party the amount of the reasonable expenses incurred by the other party and the other party's attorney in so attending, including reasonable attorney's fees."

{¶89} Upon review, we find appellant Charles Bauer is entitled to his costs for attending the deposition. We hereby remand this case to the trial court for the limited purpose of awarding costs to appellant Charles Bauer.

{¶90} Assignments of Error I, II, and III are denied. Assignment of Error IV is granted.

{¶91} The judgment of the Court of Common Pleas of Fairfield County, Ohio is hereby affirmed in part and reversed in part.

By Farmer, J.

Wise, J. concur and

Hoffman, P.J. concurs in part and dissents in part.

s/ Sheila G. Farmer

s/ John W. Wise

\_\_\_\_\_

JUDGES

SGF/sg 427

*Hoffman, P.J., concurring in part and dissenting in part*

{¶92} I concur in the majority's analysis and disposition of all of Appellants' assignments of error as they relate to Appellants' claims against Appellee Thraem. However, I would reverse the trial court's dismissal of Appellants' claims against the other Appellees.

s/ William B. Hoffman  
HON. WILLIAM B. HOFFMAN

