

SPANGLER, APPELLANT, v. KEHRES, APPELLEE.

[Cite as *Spangler v. Kehres*, 1996-Ohio-453.]

Appeal dismissed as improvidently allowed.

(No. 95-1130—Submitted at the New Philadelphia Session April 17, 1996—

Decided June 12, 1996.)

APPEAL from the Court of Appeals for Richland County, No. 94-CA-69.

Clark, Perdue, Roberts & Scott Co., L.P.A., and Edward L. Clark, for appellant.

Sauter & Hohenberger and Kenneth R. Beddow, for appellee.

{¶ 1} The appeal is dismissed, *sua sponte*, as having been improvidently allowed.

MOYER, C.J., F. E. SWEENEY, PFEIFER, COOK and STRATTON, JJ., concur.

DOUGLAS, J., dissents.

RESNICK, J., dissents separately.

ALICE ROBIE RESNICK, J., dissenting.

{¶ 2} I would reverse the court of appeals' judgment. Summary judgment should not have been granted, since there was a genuine issue of material fact. Additionally, reviewing this case would give us an opportunity to restrict *Marchetti v. Kalish* (1990), 53 Ohio St.3d 95, 559 N.E.2d 699.
