**[Cite as *Brown v. Persaud*, 2015-Ohio-1844.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 101955**

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## WILLA D. BROWN

PLAINTIFF-APPELLEE

vs.

## HARRY PERSAUD, M.D., ET AL.

DEFENDANTS-APPELLANTS

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**JUDGMENT:**
DISMISSED

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Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-12-797201

**BEFORE:** McCormack, J., Jones, P.J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** May 14, 2015

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TIM McCORMACK, J.:

**{¶1}** This case came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. On September 19, 2014, defendants-appellants, Harry Persaud, M.D. and Harry Persaud, M.D., Inc. (collectively "Persaud"), appealed from an order of the trial court of July 11, 2014, that granted plaintiff-appellee, Willa D. Brown's, motion to compel discovery of Persaud's expert witness and an order of the court dated September 13, 2014, that denied Persaud's motion to reconsider the court's entry of July 2014.

**{¶2}** On October 3, 2014, this court dismissed Persaud's appeal, sua sponte, as untimely. Persaud then filed a motion for reconsideration of this court's dismissal, to which there was no objection or brief in response filed by Brown.

**{¶3}** In his motion, Persaud argued that at the time the trial court issued its July 2014 order, there had been no claim that the information Brown sought was privileged or protected and the trial court's entry of July 2014 did not address arguments pertaining to privileged or protected matters. He claimed, as a result, that he could not have filed a notice of appeal at that time. Rather, Persaud argued, the trial court's order of September 2014 denying his motion for reconsideration was the first time the trial court rejected Persaud's claim that the discovery sought by Brown was privileged or protected information, and therefore, the filing of a notice of appeal of the September 2014 entry was proper. We granted Persaud's motion based upon his uncontested representations. Upon reconsideration, we reinstated the appeal.

**{¶4}** On appeal, Persaud argues that the trial court erred in compelling the discovery of the expert's communication and materials from non-related cases that are privileged and protected work product. In response, Brown asserts that Persaud's appeal is untimely because it was not filed within 30 days of the trial court's entry granting Brown's motion to compel discovery of privileged or protected documents. Brown also claims that the trial court did not abuse its discretion in granting her motion to compel, stating that the information sought from Persaud's expert witness regarding his retention as expert in several other cases demonstrates the witness's bias, pecuniary interest, and lack of credibility. Brown claims it was therefore discoverable.

**{¶5}** This appeal was originally dismissed as untimely. Upon reconsideration, the appeal was reinstated with specific instructions that this court will consider "whether the trial court's order requiring [Persaud] to produce purported privileged attorney communications and work product information/materials was improper."

**{¶6}** Upon further review of the trial court record, however, we find that Persaud did raise the issue of privilege or work product protection in its opposition to Brown's motion to compel. Specifically, Persaud argued that Brown's motion should be denied because "facts known and opinions held by [Persaud's expert], Dr. Klancke, in cases in which Dr. Klancke may be a consulting expert are protected by Civ.R. 26(B)(5)(a)." Persaud further claimed that if Dr. Klancke is compelled to answer questions regarding his opinions in other cases in which he is a consulting expert, he could be forced to divulge "protected opinions."

**{¶7}** Civ.R. 26(B)(5)(a) provides as follows:

> Subject to the provisions of division (B)(5)(b) of this rule and Civ.R. 35(B), a party may discover facts known or opinions held by an expert retained or specially employed by another party in anticipation of litigation or preparation for trial only upon a showing that the party seeking discovery is unable without undue hardship to obtain facts and opinions on the same subject by other means or upon a showing of other exceptional circumstances indicating that denial of discovery would cause manifest injustice.

*Nunley v. Nationwide Children's Hosp.*, 10th Dist. Franklin No. 13AP-425, 2013-Ohio-5330.

**{¶8}** As such, it is evident that the trial court considered the assertion that the requested information was protected from discovery because it was privileged or otherwise protected. Presumably, the trial court rejected that argument when it issued its order compelling discovery on July 11, 2014.

**{¶9}** App.R. 4(A) provides that a party must file a notice of appeal within 30 days of the entry of a final appealable order. This court lacks jurisdiction over any appeal that is not timely filed. *CapitalSource Bank v. Miles*, 8th Dist. Cuyahoga No. 100022, 2014-Ohio-119, ¶ 7, citing *Chinnock v. Rothschild*, 8th Dist. Cuyahoga No. 83099, 2003-Ohio-6928, ¶ 18.

**{¶10}** Here, Persaud failed to file his notice of appeal within 30 days of the trial court's order of July 11, 2014, compelling discovery. The appeal is therefore dismissed as untimely.

It is ordered that appellee recover of appellants costs herein taxed.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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TIM McCORMACK, JUDGE

LARRY A. JONES, SR., P.J., and
MARY EILEEN KILBANE, J., CONCUR