REASON et al.

v.

WILSON CONCRETE PRODUCTS, INC., et al.*

[Cite as *Reason v. Wilson Concrete Prod., Inc.*, 119 Ohio Misc.2d 91, 2002-Ohio-4230.]

Court of Common Pleas of Ohio,

Montgomery County.

Nos. 2000 CV 03431, 2000 CV 04007, 2000 CV 04153, 2000 CV 04641, 2001 CV 01265, 2001 CV 03119, 2001 CV 04568, 2001 CV 04606, 2001 CV 04609, 2001 CV 04650.

Decided March 18, 2002.

Gary J. Leppla, for Melissa A. Reason, Kurt R. Reason, individually and as next friend of Kenton Reason, Katie Reason, and Kari M. Reason.

John G. Witherspoon, Jr., for defendants Reason Homes, Inc., Melissa A. Reason, Kurt R. Reason, and Auto-Owners Mutual Insurance Company.

Robert J. Surdyk, James M. Peters, and Don Little, for Wilson Concrete Products, Inc.

R. Jeffrey Baker, for Timothy J. Blashock and Blashock Plumbing, Inc.

James D. Utrecht, for Blashock Plumbing, Inc.

F. Joseph Schiavone, for Timothy J. Blashock.

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* Reporter's Note: For subsequent case, see *Reason v. Wilson Concrete Prod., Inc.*, 119 Ohio Misc.2d 94, 2002-Ohio-4236, 774 N.E.2d 784.

Gregory P. Dunsky, Montgomery County Assistant Prosecuting Attorney, for Montgomery County, Ohio Division of Building Regulations, Montgomery County Combined Health District, Edwin C. Lemasler, and Mark Allen.

Rasheed A. Simmonds, for Amanda J. Neal Foglyano, administrator of the estate of Darrel Neal, Barbara S. Neal, and Barbara A. Neal.

M. Andrew Sway, for National Mutual Insurance Company.

John McCoy and John Theiler Bode, for George F. Kuhn & Co.

JEFFREY E. FROELICH, Judge.

{¶1} On August 4, 1999, a home was destroyed by a propane gas explosion. One person died and several were injured, some very seriously. There have been approximately ten separate lawsuits filed arising out of this incident, not to mention a veritable plethora of cross-claims, third-party claims, and counterclaims.

{¶2} Among the defendants are Melissa Reason, Kurt Reason, and Reason Homes, Inc. (the "Reasons"). They are being defended by attorney John G. Witherspoon, Jr., of the firm of Freund, Freeze & Arnold ("FF&A"). They are otherwise represented in their capacities as plaintiffs, which are not at issue here.

{¶3} George K. Kuhn & Company, Thomas M. Kuhn, and William Hatton (the "Kuhn parties") are defendants in several of the lawsuits and have filed a claim against the Reasons. The Kuhn defendants have asked the court to disqualify FF&A due to the fact that attorney Pat Janis of FF&A previously represented George E. Kuhn & Company in another lawsuit; it is alleged that this constitutes a conflict of interest and that the Reasons can be represented only by a law firm that does not have a conflict with

the Kuhn parties.

{¶4} The black-letter law does not appear to be disputed, and it is clear that a court has broad discretion in ruling on a disqualification motion. *State ex rel. Keenan v. Calabrese* (1994), 69 Ohio St. 3d 176, 180. However, "[a]n attorney should not be disqualified *solely* upon an allegation of a conflict of interest; even where the requested disqualification is based upon ethical considerations, the moving party still must demonstrate that disqualification is necessary." (Emphasis in original.) *Creggin Group, Ltd. v. Crown Diversified Industries Corp*. (1996), 113 Ohio App. 3d 853, 858, cited in *Youngstown v. Joenub* (Sept. 28. 2001). Mahoning App. No. 0l-CA-0l. at 21.

{¶5} In cases involving potential conflicts, courts typically employ the "substantial relationship" test. An attorney may not accept employment against a former client where there is a substantial relationship between the existing controversy and the prior representation. *Morford v. Morford* (1993), 85 Ohio App. 3d 50, 57, citing *White Motor Corp. v. White Industries* (1978), 60 Ohio App. 2d 82, 87. The primary purpose of disqualification is to protect the confidentiality of information, even if the information is only potentially involved in the current action. *Morford* at 57.

{¶6} This analysis was followed in *Stevens v. Grandview Hosp. & Med. Ctr*. (Oct 20, 1993), Montgomery App. No. 14042, where the court of appeals upheld the trial court's disqualification of plaintiffs' counsel on the motion of Grandview, represented by Freund, Freeze & Arnold. Subsequently, where plaintiffs' attorney unfortunately passed away, the case was remanded to the trial court to determine whether any other members of the plaintiffs' attorney's firm had acquired confidential information, thus emphasizing the factual as well as legal nature of the inquiry the court must conduct.

{¶7} Once the sometimes not-so-subtle ad hominem invectives are removed from the motions and memoranda, the question becomes whether the subject matters of FF&A's representations are "substantially related" and whether the firm acquired confidential information. It initially appears to the court that the similarity relates to the means utilized by Kuhn to deliver a product and that the distinction between damages caused by propane or carbon monoxide *may* he irrelevant to the disqualification criteria.

{¶8} The court cannot consider the issue further without more facts concerning the prior case and the representation by FF&A. Therefore, there will be a hearing on April 12, 2002, at 1:30 p.m. While any party to the litigation may appear, testimony and exhibits will be accepted only from FF&A and Kuhns' interests; further, certain documents and testimony may have to be reviewed in camera. The file concerning the prior representation shall be produced by FF&A to the court under seal at 4:00 p.m. on March 29, 2002.

Judgment accordingly.