IN THE SUPREME COURT OF OHIO

DAN RECTOR	)	Ohio Supreme Court Case No. 2021-1185
	)	
Plaintiff/Appellant,	)	On Appeal From the Cuyahoga County of
	)	Appeals Eight Appellate District
vs.	)	
	)	Court of Appeals
AMELIA DORSEY	)	Case No. CA-20-109835
	)	
Defendant/Appellee.	)	

APPELLEE AMELIA DORSEY'S MEMORANDUM IN RESPONSE TO MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT DAN RECTOR

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STATEMENT OF APPELLEE'S POSITION AS TO WHETHER THIS CASE IS OF PUBLIC OR GREAT GENERAL INTEREST

This case is not of public or great general interest for several reasons. First, despite the Appellant's contention that this Court should accept jurisdiction because a conflict exists between the Eighth and Twelfth appellate districts, the Appellant has not followed the process for filing a certified conflict appeal. Second, there is no conflict. Finally, the Appellant has not provided any other compelling reason why the Court should regard this case to be a matter of public or great general interest.

I. THIS APPEAL DOES NOT INVOLVE A CONFLICT BETWEEN APPELLATE DISTRICTS

A. THE APPELLANT HAS NOT PROPERLY PLACED AN ALLEGED CONFLICT BETWEEN APPELLATE DISTRICTS BEFORE THIS COURT.

There is a process for filing an appeal to the Ohio Supreme Court based on a conflict between appellate districts. The Appellant has not followed it. Article IV, Section 3(B)(4) of the Ohio Constitution provides:

> Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

Any interested party to an appellate proceeding may move the court of appeals for an order certifying a conflict under Article IV, Section 3(B)(4), pursuant to Rule 25(A) of the Ohio Rules of Appellate Procedure. An appellate court may also certify a conflict on its own motion. *See State V. Kinney*, 79 Ohio St.3d 1487, 683 N.E.2d 789 (1997).

The procedure for filing an appeal based on a certified conflict is set forth in Rule 8.01 of the Supreme Court of Ohio Rules of Practice, which provides in pertinent part:

(A) **General.** When a court of appeals issues an order certifying a conflict pursuant to Article IV, Section 3(B)(4) of the Ohio Constitution, any interested party to the proceeding may institute a certified-conflict case by filing a notice of certified conflict in the Supreme Court.

To institute a certified conflict case, the appellant must file a notice of certified conflict, with copies of the date-stamped court of appeals order certifying a conflict, the certifying court's opinion, and the conflicting appellate court's opinion. S.Ct.Prac.R. 8.01(B).

In this case ("*Rector III")*, the Appellant contends that there is a conflict between appellate districts regarding whether a plaintiff may re-file his complaint twice. However, the Appellant has not followed the procedures set forth in S.Ct.Prac.R. 8.01 or App.R. 25(A) for filing an appeal to the Ohio Supreme Court based on a conflict. Instead, he is attempting to place an alleged conflict between appellate districts before this Court by filing a Section 7 Jurisdictional Appeal, arguing that the alleged conflict is a matter of public or great general interest. If this was a legitimate way to place a conflict before the Court, there would be no need for Section 8. If the Appellant wished to have this Court review conflicting decisions from different appellate districts, he should have moved the Eighth District Court of Appeals to certify a conflict, pursuant to App.R. 25(A), and then filed an appeal under S.Ct.Prac.R. 8.01.

B. THERE IS NO CONFLICT BETWEEN THE EIGHTH DISTRICT COURT OF APPEALS' HOLDING IN THIS CASE AND THE TWELFTH DISTRICT COURT OF APPEALS' HOLDING IN *JOHNSON V. JEFFERSON INDUSTRIES CORPORATION*.

There is no conflict between the Eight District Court of Appeals' holding in this case and the Twelfth District Court of Appeals' holding in *Johnson v. Jefferson Industries Corporation*, 2015-Ohio-5035, 60 N.E.3d 424 (12th Dist.). In this case, the Eighth District Court of Appeals held that any re-filing of a case dismissed other than on

the merits constitutes a use of the savings statute. *Rector v. Dorsey*, Eighth Dist. Cuyahoga No. No. 109835, 2021-Ohio-2675, ¶¶ 9-10. The Court further held that "having once availed himself of R.C. 2305.19 through the filing of the second action on February 7, 2018, Rector could not twice invoke R.C. 2305.19 for the third complaint that was filed in August 2019, eight months after the expiration of the extended period set forth in R.C. 2305.19(A)." *Id.* at ¶ 10. In *Johnson v. Jefferson Industries Corporation*, the Twelfth District Court of Appeals held that " 'Johnson could not invoke the savings statute a second time to file Johnson III * * * and that [a]ccordingly, the complaint in Johnson III was time-barred * * *." *Johnson* at ¶ 25. These two holdings are not in conflict. In fact, they are consistent, although there are some differences in the underlying facts.

According to the Appellant, "[i]n addressing the exact same argument asserted by Appellee herein, the court held that, 'If the statute of limitations had not elapsed at the time the complaints were filed, Johnson was permitted to refile the second and third complaints without the necessity of invoking the savings statute . . . .'" Appellant's Memorandum in Support of Jurisdiction at pg. 4, quoting *Johnson* at ¶ 17. The Appellant is mistaken. The language the appellant quotes is not the *Johnson* Court's holding. Rather, it is an incidental discussion of a hypothetical situation that was not before the Court, and which was not necessary to the Court's holding. The Ohio Supreme Court has explained that "'an incidental and collateral opinion uttered by a judge'" is not a holding, but rather obiter dictum. *State ex rel. Gordon v. Barthalow*, 150 Ohio St. 499, 506, 83 N.E.2d 393 (1948), quoting Websters New International Dictionary (2 Ed.). Obiter dictum is an incidental remark, reflection, comment, or the like,'" and is not binding. *Id.* Accordingly, the Eighth District Court of Appeals found

that the language in question was mere obiter dictum. *Rector v. Dorsey*, 2021-Ohio-2675 at ¶ 6.

II. THIS CASE IS NOT OTHERWISE OF PUBLIC OR GREAT GENERAL INTEREST

This case does not otherwise involve a matter of public or great general interest. It does not involve a question of public policy, equal rights, due process, a vexing procedural issue that requires clarification, or any other matter that is of public or great general interest. It involves an isolated instance of a case being dismissed and re-filed twice, following a history of neglect. It is clear from Section 2305.19 of the Ohio Revised Code that any re-filing constitutes a use of the savings statute. Moreover, it is clear that the savings statute may only be used to refile a case once. *See Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 680 N.E.2d 997 (1997). Therefore, the Appellant's second re-filing, which occurred after the expiration of the statute of limitations, was not permitted. This is what the trial court and the Eighth District Court of Appeals correctly decided, and the Appellant's mere disagreement with the lower courts does not make this a matter of public or great general interest.

The Appellant also contends that this case is a matter of public or great general interest because of his allegations regarding the severity of the accident, the nature and extent of his injuries, and the cost of his treatment. However, there is no evidence in the record concerning these issues, which remain in dispute. In fact, it is clear from the procedural history of this case that the Appellant has consistently failed to provide the Appellee with basic information about his claim. In Case Number CV-18-892666 ("*Rector II*"), the Appellant's failure to respond to the Appellee's Interrogatories and Request for Production of Documents coupled with his failure to appear for his

deposition left the Appellee unable to complete her investigation and evaluation of the Appellant's claim and resulted in the dismissal of the Appellant's claim. *See* Appellee's Motion to Compel Discovery in *Rector III*. This failure to provide information and documents in discovery continued in *Rector III*, prompting Appellee to file a Motion to Compel Discovery as well as a Motion *in Limine* regarding the Appellant's failure to timely produce a medical expert witness report. The Appellant contends that his appeal must be heard in order to correct an injustice, but if there has been any injustice in this case, it is the Appellant's assertion of a punitive damages claim based solely on the allegation that the Appellee was driving while tired after a long day of working as a doctor at the Cleveland Clinic, followed by the Appellant's unexplained refusal to cooperate in the discovery process over the course of *Rector II* and *Rector III*. *See* the Appellant's Complaint in *Rector III*. The Appellant's current predicament is solely the result of his own neglect of his claim and is not of public or great general interest.

ARGUMENT IN SUPPORT OF APPELLEE'S POSITION REGARDING APPELLANT'S PROPOSITIONS OF LAW

I. THE APPELLANT HAS NOT SET FORTH ANY PROPOSITIONS OF LAW

Under the heading "Proposition of Law", the Appellant states: "The Eighth District Court of Appeals committed Reversible Error by Affirming the Decision of the Trial Court Granting Summary Judgment to Appellee. The Decision of both Lower Court (sic) are Directly Opposite of the Decision Rendered in *Johnson v. Jefferson Industries Corporation*, 2015-Ohio-5035 (2015) and This Court Should Accept this Appeal and Reverse the Erroneous Decision of the Court of Appeals." This is not a Proposition of Law. It is merely a repackaging of the argument in the previous section

of his Memorandum that there is a conflict between Eighth District and the Twelfth District. As previously discussed, the Appellant has failed to properly place any alleged conflict before this Court, and in any event, the decisions of the two Courts are not in conflict.

Although the Appellant has not properly set forth any Propositions of Law, the Appellee will attempt to respond to several points raised in the Appellant's Memorandum.

II. A CIVIL ACTION MAY NOT BE DISMISSED AND RE-FILED TWICE

A civil action may not be dismissed and re-filed twice. The refiling of a dismissed case is authorized by Section 2305.19 of the Ohio Revised Code, the general savings statute, which provides in pertinent part:

> (A) In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. This division applies to any claim asserted in any pleading by a defendant.

In *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 680 N.E.2d 997 (1997), the Ohio Supreme Court stated that "the savings statute can be used only once to refile a case," although, strictly speaking, this was not the holding of the Court. *Id.* at 227; *See Duncan v. Stephens*, 8th Dist. Cuyahoga No. 83238, 2004-Ohio-2402, ¶ 21. However, the Eighth District Court of Appeals and other Ohio appellate courts have consistently relied on the dictum in *Thomas* and have held that the savings statute may not be used twice. *See Brown v. Solon Pointe at Emerald Ridge*, 8th Dist. Cuyahoga No. 99363, 2013-Ohio-4903; *Duncan v. Stephens*, 8th Dist. Cuyahoga No. 83238, 2004-Ohio-2402; *Paul*

v. I-Force, LLC, 2nd Dist. Champaign No. 2016–CA–25, 2017-Ohio-5496, ¶ 36; *Rail v. Arora*, 3rd Dist. Marion No. 9–12–56, 2014-Ohio-1392, ¶ 19; *Mihalcin v. Hocking College*, 4th Dist. Athens No. 99CA32, 2000 WL 303138 (March 20, 2000), ¶ 4; *Wright v. Proctor-Donald*, 5th Dist. Stark No. 2012–CA–00154, 2013-Ohio-1973, ¶ 3; *Mays v. Toledo Hosp.*, 6th Dist. Lucas, 2015-Ohio-1865, ¶ 10; *Eichler v. Metal & Wire Products Co.*, 7th Dist. Columbiana No. 07 CO 14, 2008-Ohio-3095; *Vogel v. Northeast Ohio Media Group, LLC*, 2020-Ohio-854, 152 N.E.3d 918, ¶ 11 (9th Dist.); *Gao v. Barrett*, 10th Dist. Franklin No. 10AP–1075, 2011-Ohio-3929, *Estate of Carlson v. Tippett*, 122 Ohio App.3d 489, 491, 702 N.E.2d 143 (11th Dist. 1997); *Johnson v. Jefferson Industries Corporation*, 2015-Ohio-5035 (12th Dist.). If the savings statute may be utilized more than once, "a plaintiff could infinitely refile his action, and effectively eliminate statutes of limitations." *Duncan* at ¶ 21.

In this case, the Appellant has attempted to utilize the savings statue twice to refile his Complaint. The second refiling was not authorized by Ohio law. According to O.R.C. 2305.10(A), the Appellant was required to file his Complaint within two years of the Accident, which occurred on February 8, 2016. The Appellant timely filed the First Complaint, in Case Number CV-17-884625 ("*Rector I")*, on August 16, 2017, but dismissed it without prejudice on February 7, 2018 by filing a Notice of Voluntary Dismissal, pursuant to Civil Rule 41(A)(1)(a). The Appellant's Notice of Voluntary Dismissal without prejudice qualified as a failure other than on the merits for purposes of the savings statute. *See Moore v. Mount Carmel Health System*, 162 Ohio St.3d 106, 114, 2020-Ohio-4113, 164 N.E.3d 376, ¶ 30. At this point, O.R.C. 2305.19(A) authorized the Appellant to either refile his Complaint within one year of the dismissal of *Rector I* (February 7, 2019) or within the original two-year statutory deadline for filing (February

8, 2018), whichever was later. Since the later of the two dates was February 7, 2019, the Appellant had until February 7, 2019 to refile.

Instead of using the entire year granted by the savings statute, or at least a portion of the year, the Appellant refiled the action on February 7, 2018, the same day he dismissed *Rector I* and one day before the expiration of the original two-year statutory period. This was the Appellant's prerogative. However, refiling before the expiration of the statute of limitations did not enable him to avoid utilizing the savings statute. The refiling constituted a use of the savings statute, whether he elected to refile early, on February 7, 2018, or whether he elected to file on the last possible day, which was February 7, 2019. *See* O.R.C. 2305.19(A).

Having utilized the savings statute by refiling his Complaint in *Rector II* on February 7, 2018, it was no longer available when the Appellant refiled the action the second time in *Rector III* on August 2, 2019, nearly one and a half years after the expiration of the statute of limitations, and nearly six months after the deadline for refiling, pursuant to O.R.C. 2305.19(A). See *Brown v. Solon Pointe, et al.*

The Appellant contends that he did not rely on the savings statute when he refiled his Second Complaint because the First Complaint was dismissed, and the Second Complaint was refiled before the expiration of the 2-year statute of limitations prescribed by O.R.C. 2305.10(A). The Appellant is mistaken. Before O.R.C. 2305.19 was modified by 2004 H 161, effective May 31, 2004, the savings statute by its express terms applied only to a failure otherwise than upon the merits occurring after the expiration of the statute of limitations. *Int'l Periodical Distrib. v. Bizmart, Inc.*, 95 Ohio St.3d 452, 453, 2002-Ohio-2488, 768 N.E.2d 1167, ¶ 7. The pre- 2004 H 161 version of the statue, enacted as part of 1953 H 1, provided in pertinent part:

> In an action commenced, or attempted to be commenced, if in due time a judgment for the plaintiff is reversed, or if the plaintiff fails otherwise than upon the merits, and the time limited for the commencement of such action at the date of reversal or failure has expired, the plaintiff, or, if he dies and the cause of action survives, his representatives may commence a new action within one year after such date (emphasis added).

When the Legislature enacted 2004 H 161, it modified O.R.C. 2305.19 by removing the clause "and the time limited for the commencement of such action at the date of reversal or failure has expired." At the same time, the Legislature added language authorizing a plaintiff to refile "within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later." See O.R.C. 2305.19(A), as modified by 2004 H 161. The current version of the statute includes these changes.

In his dissent in *Portee v. Cleveland Clinic Foundation*, Justice Kennedy explained:

> [T]he General Assembly amended R.C. 2305.19 as part of remedial legislation that broadened the scope of the statute. H.B. 161 eliminated the "malpractice trap," in which a plaintiff whose case had been dismissed without prejudice before the original limitations period had run was required to refile the action within that period, regardless of how little time was left. *Eppley v. Tri-Valley Local School Dist. Bd. of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, 908 N.E.2d 401, ¶ 8-9. The amended statute permits filing within the limitations period or within one year from dismissal, whichever period is longer. *Id.* at ¶ 9.

Portee v. Cleveland Clinic Foundation, 155 Ohio St.3d 1, 12-13, 2019-Ohio-3263, 118 N.E.3d, ¶ 39 (Kennedy, J., dissenting).

The Trial Court explained in its Judgment granting Ms. Dorsey's Motion for Summary Judgment:

> Plaintiff contends that the filing of Rector II did not "use" the savings statute since it was filed within the original period of limitations. However, the Ohio General Assembly in 2004 Amended the savings statute so that where a plaintiff

> failed other than on the merits during the pendency of the original period of limitations that the savings statute would serve to extend the time for refiling. *Eppley v. Tri-Valley Local School Dist. Bd. Of Edn.*, 122 Ohio St.3d 56, 2009-Ohio-1970, ¶ 8. This Amendment was intended to afford Plaintiff until 2/7/2019 to refile the complaint rather than forcing Plaintiff to refile the Complaint that same day. Finally, the savings statute's triggering event is the failure of the first action other than on the merits and not the filing of the second action. The fact that Plaintiff chose to refile the complaint on 2/7/18 does not change the fact that the savings statute afforded the Plaintiff the right to wait to refile until 2/7/19.

The Eighth District Court of Appeals concurred.

In support of his argument that he did not utilize the savings statute because he was within the statute of limitations when he refiled the first time, the Appellant cites *Johnson v. Jefferson Industries*. His reliance is misplaced. As discussed, above, the *Johnson* Court did not hold that a similarly situated plaintiff was permitted to re-file his complaint twice. Rather, the *Jefferson* Court held that the second re-filing was time-barred. *See Johnson* at ¶ 25. The discussion about whether the result would have been different under different circumstances than the circumstances before the *Jefferson* Court was merely obiter dictum. Moreover, the *Johnson* court's dictum appears to have been based on *Internl. Periodical Distrib. V. Bizmart, Inc.,* 95 Ohio St.3d 452, 2002-Ohio-2488, 768 N.E.2d 1167, wherein the Ohio Supreme Court analyzed the pre-2004 H 161 version of O.R.C. 2305.19. *See Johnson* at ¶ 15.

In any event, the *Johnson* court's comment that it is unnecessary to invoke the savings statute where the statute of limitations has not expired cannot be reconciled with the 2004 H 161 version of O.R.C. 2305.19, which clearly applies to all dismissals, whether before or after the expiration of the statute of limitations. There is no other reasonable interpretation now that the modified statute states that "the plaintiff may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original

applicable statute of limitations, whichever occurs later." See O.R.C. 2305.19(A). This language would be superfluous if a refiling within the statute of limitations did not constitute a use of the savings statute.

Since the savings statute may only be used once to re-file a case, and since the Appellant's re-filing of his Complaint in *Rector II* constituted a use of the savings statute, he was not permitted to use the savings statute a second to re-file his Complaint a second time in *Rector III*.

III. THE DOUBLE DISMISSAL RULE DOES NOT APPLY

The Appellant contends that "Appellee's main argument was that due to the two dismissal rule, and the Savings Statute, Appellants' third Complaint was improper. Initially, the 'double dismissal' rule argument is inapplicable herein." This is false. The Appellee never referred to the "double dismissal rule" in her Motion for Summary Judgment, which was based solely on the application of the savings statute. In her Appellee's Brief, the Appellee's discussion of the "double dismissal rule" was solely in response to the Appellant's Brief. The Appellee never argued that the Appellant's second re-filing in *Rector III* was improper due to the "double dismissal rule." Rather, the Appellee argued that the second re-filing was time-barred, and that the Appellant could not use the savings statute a second time to remedy this problem. She further argued that to the extent that the "double dismissal rule" and the savings statute are in conflict, the savings statute must prevail because it is substantive law, while Civil Rule 41 is merely procedural. This remains the Appellee's position.

The Ohio Supreme Court has explained:

> In contrast to statutes of limitations and statutes of repose, both of which limit the time in which a plaintiff may file an action, saving statutes extend that time. Saving statutes are remedial and are intended to provide a litigant an

> adjudication on the merits. *Wasyk v. Trent*, 174 Ohio St. 525, 528, 191 N.E.2d 58 (1963). Generally, a saving statute will provide that "where an action timely begun fails in some manner described in the statute, other than on the merits, another action may be brought within a stated period from such failure." Annotation, 6 A.L.R.3d 1043 (1966). It acts as an exception to the general bar of the statute of limitations. *Chadwick v. Barba Lou, Inc.,* 69 Ohio St.2d 222, 232, 431 N.E.2d 660 (1982) (Krupansky, J., concurring in part and dissenting in part).

Wilson v. Durrani, 164 Ohio St.3d 419, 421-422, 2020-Ohio-6827, 173 N.E.3d 448, ¶ 11.

Substantive law is "that body of law which creates, defines and regulates the rights of the parties." *See Krause v. State*, 31 Ohio St.2d 132, 145, 285 N.E2d 736 (1972), overruled on other grounds "The existence and duration of a statute of limitations for a cause of action constitutes an issue of public policy for resolution by the legislative branch of government as a matter of substantive law. *Erwin v. Bryan*, 125 Ohio St. 519, 525, 2010-Ohio-2202, 929 N.E.2d 1019, ¶ 29. Where substantive law and procedural rules collide, the procedural rules must give way to substantive law. *Proctor v. Kardassilaris*, 115 Ohio St.3d 71, 75, 2007-Ohio-4838, 873.N.E.2d 872, ¶ 17. Applying this Court's reasoning in *Krause* and *Erwin*, legislation extending the statute of limitations and permitting the re-filing of actions are also matters of public policy that are within the province of the legislature. *See Id*. Therefore, the savings statute, which essentially extends the statute of limitations, is a matter of substantive law. Consequently, the savings statute prevails over Civil Rule 41, to the extent that there is a conflict between the two. *See Proctor* at ¶ 17.

Civil Rule 41 merely addresses the dismissal of actions; it does not address refilings. Rather, refilings are governed by the applicable savings statute, which in this case, is O.R.C. 2305.19(A). The Appellant correctly states that he only filed one notice of voluntary dismissal under Civil Rule 41(A)(1)(a) and that the voluntary dismissal filed in *Rector I* and the involuntary dismissal filed in *Rector II* were denoted dismissals

without prejudice. His contention that the filing of the Third Complaint was not barred by *res judicata* is debatable. Regardless, *res judicata* is not the only potential bar to refiling an action; the statute of limitation may also be a bar. It does not matter whether the Appellant's Third Complaint was barred by *res judicata* if, as in this case, the Appellant was beyond the statute of limitations and the savings statute was unavailable due to a prior use.

The Appellee acknowledges that in *Olynyk v. Scoles*, 114 Ohio St.3d 56, 2007-Ohio-2878, 868 N.E.2d 254, the Ohio Supreme Court held that "[t]he double-dismissal rule of Civ. R. 41(A)(1) applies only when both dismissals were notice dismissals under Civ. R. 41(A)(1)(a)." *Id*. at syllabus. However, it appears that in *Olynyk v. Scoles* the parties did not raise, and the Court did not consider the application of the savings statute to the facts of that case. Under these circumstances, the decision in *Olynyk v. Scoles* is not directly on point.

IV. AN APPELLATE COURT FROM ONE DISTRICT DOES NOT COMMIT REVERSIBLE ERROR MERELY BY DECLINING TO FOLLOW THE DECISION RENDERED BY AN APPELLATE COURT FROM ANOTHER DISTRICT

The Appellant is apparently contending that the Eight District Court of Appeals committed reversible error by declining to follow the decision of the Twelfth District Court of Appeals in *Johnson v. Jefferson Industries*. According to the Appellant, "[t]he well-reasoned opinion of the *Johnson* case serves to defeat Appellee's motion and should permit this case to be returned to the lower court." Appellant's Memorandum at pg. 4. The Appellant is mistaken. First, as previously discussed, the issue of whether there is a conflict between the decisions of the Eighth District and the Twelfth District

has not been properly submitted to this Court, and second, in any event, there is no conflict.

Even assuming for the sake of argument that the *Jefferson* Court held that the plaintiff in that case was entitled to re-file his case twice under circumstances that were identical, or at least substantially the same as the facts in this case, the Eighth District Court of Appeals was not bound by the *Jefferson* Court's decision. The Twelfth District Court of Appeals is not a court of last resort, nor is it superior to the Eighth District Court of Appeals. Rather, it is a sister appellate district, equal to the Eighth District. *See Hogan v. Hogan*, 29 Ohio App.2d 69, 77, 278 N.E.2d 367 (1972). An appellate court from one district is not bound by the decision of an appellate court in another, equal appellate district. *State v. Gillman*, 2015-Ohio-4421, 46 N.E.3d 130, ¶ 32 (4th Dist.); *Phillips v. Phillips*, 2014-Ohio-5439, 25 N.E.3d 371, ¶ 32 (5th Dist.); *Hogan v. Hogan*, 29 Ohio App.2d at 77; *McNeal v. Cofield*, 78 Ohio App.3d 35, 37, 603 N.E.2d 436 (1992) (10th). The Twelfth District Court of Appeals' decision in *Jefferson* would not "defeat" the Eighth District Court of Appeals' decision in this case, even if the two Courts issued different holdings on the same facts, which is not the case.

V. THE EIGHTH DISTRICT COURT OF APPEALS IN THIS CASE WAS NOT BOUND BY THE EARLIER DECISION OF THE EIGHTH DISTRICT COURT OF APPEALS IN *OLYNK V. ANDRISH*

The Appellant appears to argue that the Eighth District Court of Appeals in this case was bound to follow the prior decision of the Eighth District Court of Appeals in *Olynyk v. Andrish*, 8th Dist. Cuyahoga No. 86009, 2005-Ohio-6632. The Appellant is mistaken. An appellate court is not bound by a prior decision in the same court involving different parties and causes of action. *Alliance First Nat. Bank v. Maus*, 100

Ohio App. 433, 442, 137 N.E.2d 305 (5th Dist. 1955). This case and *Olynyk* do not involve the same parties or causes of action. Therefore, the Eighth District Court of Appeals in this case was not required to follow its prior decision in *Olynyk,* even if it was directly on point, which it is not.

CONCLUSION

For the foregoing reasons, the Appellee, Amelia N. Dorsey, requests that this Court decline jurisdiction to hear the Appellant's appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served via electronic mail, on this ___20TH_____ day of October 2021 upon Gary A. Vick, Jr., Attorney for Appellant, at gavickjr@gmail.com and GVICK@VICKLAWLLC.COM.

/s/ Michael R. Shanabruch
_____
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