IN THE SUPREME COURT OF OHIO

CASE NO. 2024-0451

CHRISTINE LEWIS,
Plaintiff-Appellee,

-vs-

MEDCENTRAL HEALTH SYSTEM d/b/a OHIOHEALTH MANSFIELD HOSPITAL, TOTALMED, PLUTO HEALTHCARE STAFFING, INC., LAUREN CLAPSADDLE, R.N., and JACQUELINE SCHMITZ, R.N.,
Defendants, and

MID-OHIO EMERGENCY PHYSICIANS, LLP and ANAND PATEL, M.D.,
Defendant-Appellants.

ON APPEAL FROM THE FIFTH DISTRICT COURT OF APPEALS
RICHLAND COUNTY, CASE NO. 2023 CA 0043

MERIT BRIEF OF PLAINTIFF-APPELLEE, CHRISTINE LEWIS

Danny M. Newman Jr., Esq. (#0074740)
THE DONAHEY LAW FIRM, LLC
580 S. High St., Suite 200
Columbus, Ohio 43215
(614) 224-8166
danny@donaheylaw.com

Louis E. Grube, Esq. (#0091337)
[Counsel of Record]
Kendra Davitt, Esq. (#0089916)
FLOWERS & GRUBE
Terminal Tower, 40th Floor
50 Public Square
Cleveland, Ohio 44113
(216) 344-9393
leg@pwfco.com
knd@pwfco.com

Attorneys for Plaintiff-Appellee, Christine Lewis

Kevin M. Norchi, Esq. (#0034659)
Steven J. Forbes, Esq. (#0042410)
FREEMAN MATHIS & GARY, LLP
23240 Chagrin Boulevard, Suite 210
Cleveland, Ohio 44122
kevin.norchi@fmglaw.com
steve.forbes@fmglaw.com

Attorneys for Defendant-Appellants, Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP

Kenneth R. Beddow, Esq. (#0023304)
BONEZZI SWITZER POLITO & HUPP CO., L.P.A.
24 West Third Street, Suite 204
Mansfield, OH 44902
kbeddow@bsphlaw.com

Attorney for Defendant, MedCentral Health System dba OhioHealth Mansfield Hospital

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
Fax: (216) 344-9395

Richard S. Milligan, Esq. (#0016385)
Anthony E. Brown, Esq. (#0070026)
Thomas R. Himmelspach, Esq. (#0038581)
MILLIGAN PUSATERI CO., LPA
4686 Douglas Circle NW – P.O. Box 35459
Canton, Ohio 44735
(330) 526-0770
rmilligan@milliganpusateri.com
tbrown@milliganpusateri.com
thimmelspach@milliganpusateri.com

Attorneys for Amicus Curiae, Ohio Association of Civil Trial Attorneys

Jonathan T. Brollier, Esq. (#0081172)
Maurice Wells, Esq. (#0096804)
Wan Q. Zhang, Esq. (#0102306)
EPSTEIN BECKER & GREEN, P.C.
250 West Street, Suite 300
Columbus, Ohio 43215
(614) 872.2500
JBrollier@ebglaw.com
MWells@ebglaw.com
WZhang@ebglaw.com

Attorneys for Amici Curiae, American Medical Association, Ohio State Medical Association, Ohio Osteopathic Association, and Ohio Hospital Association

Sean McGlone, Esq. (#0075698)
OHIO HOSPITAL ASSOCIATION
65 E. State Street, Suite 500
Columbus, Ohio 43215
(614) 221-7614
sean.mcglone@ohiohospitals.org

Attorney for Amicus Curiae, Ohio Hospital Association

Bradley L. Snyder, Esq. (#0006276)
ROETZEL & ANDRESS, LPA
41 South High Street, 21st Floor
Columbus, OH 43215
bsnyder@ralaw.com

Attorney for Defendants, TotalMed and Jacqueline Schmitz, R.N.

Mary McWilliams Dengler, Esq. (#0034635)
DICKIE, MCCAMEY & CHILCOTE, PC
10 West Broad Street, Ste. 1950
Columbus, OH 43215
mdengler@dmclaw.com

Attorney for Defendants, Pluto Healthcare Staffing, Inc. and Lauren Clapsaddle, RN

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
Fax: (216) 344-9395

TABLE OF CONTENTS

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

TABLE OF AUTHORITIES

Cases

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Constitutional Provisions

Statutes

Rules

Other Authorities

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

INTRODUCTION

This Court should dismiss this appeal as one that was improvidently accepted. Defendant-Appellants, Dr. Anand Patel, M.D. ("Dr. Patel") and Mid-Ohio Emergency Physicians, LLP ("Mid-Ohio"), now admit that R.C. 2323.451(D)(1) *does* extend the statute of limitations under certain circumstances, pivoting instead to unfounded contentions about the necessity of using the John Doe rules in Civ.R. 15(D). *Brief of Defendants-Appellees Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP filed August 6, 2024 ("Defendants' Merit Brief"), p. 5, 8*. This swift retreat thoroughly obliterates the stated basis for their appeal, which was predicated on the notion that the Fifth District Court of Appeals had extended the statute of limitations by judicial fiat. *Memorandum in Support of Jurisdiction of Appellants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP filed March 29, 2024 ("MISJ"), p. 1-3*. If the theory these Defendants originally fashioned for "why the case is of public or great general interest" is not actually implicated by this dispute, there is no reason for this Court to hear it. *S.Ct.Prac.R. 7.02(C)(2)*; *accord Ohio Const., art. IV, § 2(B)(2)(e)*.

If this Court reaches the merits, the scope of the dispute has unmistakably narrowed to the case-specific question of whether a plaintiff can abandon earlier efforts under Civ.R. 15(D) and use R.C. 2323.451(D)(1) to join any additional defendant within a short period after the medical malpractice limitations period would have otherwise elapsed. The answer to that question must be yes because that is exactly what the statute directs. The Fifth District's opinion should be affirmed because R.C. 2323.451(D)(1) and (2) clearly and unambiguously permit joinder of "any additional medical claim or defendant" within a brief 180-day extension of the medical malpractice statute of limitations, so long as the limitations period "had not expired prior to the date the original

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

complaint was filed." (Emphasis added.) The statute does not expressly carve out an exception like the one that Defendants Dr. Patel and Mid-Ohio request. Rather, they fall within the extremely broad class of "any additional" defendants. To the extent that these defendants try to establish that they were already pled into the case as John Doe defendants, they contradict themselves, overplay the text of the first complaint, and ignore the substantial body of Ohio case law holding that an initial complaint must be disregarded once an amended complaint supplants it.

Although Plaintiff-Appellant Christine Lewis ("Lewis") has consistently argued that R.C. 2323.451 clearly and unambiguously permitted the joinder she accomplished below and extended the statute of limitations, any ambiguity in the law still justifies affirming the Fifth District's decision. Defendants Dr. Patel and Mid-Ohio have not provided a proposition of law or any argument that the statute of limitations is anything but remedial, requiring liberal construction in favor of allowing cases to reach the merits. Indeed, their arguments undercut the primary motivation for the new law—avoiding shotgun pleading—and would require plaintiffs to arrange for an army of process servers to invade medical facilities with summonses any time there is doubt about the name of a negligent physician. For these reasons, described in detail below, the propositions of law pursued by Dr. Patel and Mid-Ohio should be rejected.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

STATEMENT OF THE CASE AND FACTS

Defendants Dr. Patel and Mid-Ohio provided this Court with an inappropriately argumentative statement of facts, rife with complaints about what Plaintiff Lewis "could have" but "did not" do. *Merit Brief of Appellants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP filed August 6, 2024 ("Defendants' Brief"), pp. 1-4.* Lewis offers the following statement of the actual facts, properly limited to the allegations in the

operative complaint, accepting them as true consistent with the standard governing these proceedings, and describing the procedural history of this case objectively. *See, e.g., O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus; *Greeley v. Miami Valley Maintenance Contrs., Inc.*, 49 Ohio St.3d 228, 229-230 (1990).

I. Plaintiff Lewis pursued professional negligence claims after she was left medicated and unsupervised in her bed at Mansfield Hospital and suffered serious injuries falling out of it.

Plaintiff Lewis was admitted to the emergency department on February 14, 2022, at a facility operated by Defendant MedCentral Health System d/b/a OhioHealth Mansfield Hospital ("Mansfield Hospital"). *Index of Record on Appeal filed June 27, 2024, Trial Court Record ("T.R.") 9, Plaintiff's Amended Complaint filed April 14, 2023 ("Am. Complaint"), ¶ 5, 12-13*. Plaintiff Lewis was treated that day by Defendant Dr. Patel, who was employed and assigned to work at Mansfield Hospital by Defendant Mid-Ohio. *Am. Complaint, ¶ 6, 9*. Two nurses, Defendant Lauren Clapsaddle, R.N. ("Nurse Clapsaddle"), employed by Defendant Pluto Healthcare Staffing, Inc., and Jacqueline Schmitz, R.N. ("Nurse Schmitz"), employed by Defendant TotalMed, provided nursing care at Mansfield Hospital in aid of Dr. Patel's efforts. *Id., ¶ 7-8, 10-11*.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

During her treatment, Plaintiff Lewis was medicated and left alone in a hospital bed despite the general duty these Defendants each owed to monitor and maintain her safety and otherwise provide medical care in a reasonably safe manner. *Am. Complaint, ¶ 12-13*. Without such supervision, the sedated patient fell out of her hospital bed onto the floor. *Id., ¶ 13*. Her neck fractured when she landed, which necessitated costly "surgical intervention and postoperative care, treatment, and therapy." *Id., ¶ 14, 16*. She experienced "extreme pain and suffering, anxiety, mental anguish, and loss of enjoyment of life," and the injury rendered "future medical costs" likely. *Id., ¶ 15-16*.

On October 18, 2022, Plaintiff Lewis commenced this action for professional negligence against Defendant Mansfield Hospital and ten John Doe "physicians, nurses, hospitals, corporations, health care professionals, or other entities that provided negligent medical care" to her, either "individually or by their agents, apparent agents, or employees, names unknown." *T.R. 1, Complaint filed October 18, 2022 ("Original Complaint"), pp. 1-5.* Mansfield Hospital answered, admitting Lewis was "receiving care and treatment" on February 14, 2022, denied liability, and lodged affirmative defenses. *T.R. 7, Answer of Defendant Mansfield Hospital filed November 21, 2022, pp. 1-3.*

With the consent of Defendant Mansfield Hospital, Plaintiff Lewis filed her Amended Complaint on April 14, 2023, for the purpose of "joining in the action additional defendants" to her negligence claim "pursuant to Ohio Revised Code Section 2323.451(C), (D)(1) and (D)(2)." *Am. Complaint, ¶ 1-3.* Defendants Dr. Patel, Nurses Clapsaddle and Schmitz, and their employers were added as parties. *Id., ¶ 6-11.* The Amended Complaint made no reference to any John Doe defendants. *Id., pp. 1-6.* The hospital again answered, admitting it consented to an amended complaint, admitting Lewis had been a patient on February 14, 2022, otherwise denying liability, and again pleading affirmative defenses. *T.R. 16, Answer of Defendant Mansfield Hospital filed May 1, 2023 ("Mansfield Answer to Am. Complaint"), pp. 1-3.* Defendant Nurses Clapsaddle and Schmit and their employers answered the Amended Complaint in similar fashion. *T.R. 29 and 30.*

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

II. Dr. Patel and Mid-Ohio asked for an early exit from the litigation based on their statute of limitations defense.

Without answering the Amended Complaint, Defendants Dr. Patel and Mid-Ohio submitted their Motion to Dismiss. *T.R. 20, Motion to Dismiss on Behalf of Defendants Dr. Patel and Mid-Ohio filed May 22, 2023 ("Mtn. Dis.").* They generally urged the trial

court to terminate the claims against them because they "were not named prior to the expiration of the one-year statute of limitations for medical claims," which concluded on February 14, 2023. *Mtn. Dis., pp. 1, 4-7.* They argued that Plaintiff Lewis had not strictly followed "the requirements set forth in Civil Rule 15" regarding John Doe defendants, which "could have preserved the claim as to unknown defendants." *Id.* Although Lewis referenced R.C. 2323.451(C) and (D) in her Amended Complaint, Dr. Patel and Mid-Ohio did not initially suggest that these provisions would not permit their joinder under the circumstances. *Id., pp. 1-7.*

Plaintiff Lewis opposed dismissal of Defendants Dr. Patel and Mid-Ohio, explaining that under R.C. 2323.451, a plaintiff pursuing a medical claim may join additional defendants to a timely-filed proceeding within 180 days following the conclusion of the one-year statute of limitations in R.C. 2305.113. *T.R. 22, Plaintiff's Memorandum in Opposition to Defendants Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP's Motion to Dismiss filed May 24, 2023 ("Lewis' Memo. Opp."), pp. 1-3.* Lewis established that she had complied with the statute of limitations consistent with the plain dictates of R.C. 2323.451(D)(1) by joining Dr. Patel and Mid-Ohio to the timely-filed litigation on April 14, 2023, merely 59 days after the statute of limitations would have otherwise ended on February 14, 2023. *Id., p. 3.*

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Defendants Dr. Patel and Mid-Ohio responded by arguing for the first time in their reply that "R.C. § 2323.451 requires compliance with Civil Rule 15," including the "requirement to serve John Doe Defendants." *T.R. 31, Reply in Support of Defendants Dr. Patel and Mid-Ohio's Memorandum of Law in Support of Their Motion to Dismiss filed June 13, 2023 ("Reply Supp. Mtn. Dis."), p. 1.* They complained that Plaintiff Lewis "wishes to be free of the obligations of Civil Rule 15 and to add a party after the statute of

limitations has lapsed" while posturing that she was required to specifically follow the provisions of Civ.R. 15(D) as to "unknown Defendants" or an amendment "cannot be related back to the filing of the initial Complaint and is untimely and [sic] to these Defendants." *Reply Supp. Mtn. Dis., p. 2*. Since Lewis supposedly "knew that a physician of unknown name provided allegedly negligent care in the emergency department on February 14, 2022" when the case was initiated, Dr. Patel and Mid-Ohio maintained that she "was then under an obligation to name and serve the Unknown Physician at the time of first filing pursuant to Civil Rule 15." *Id., p. 3*.

III. The trial court entered a judgment of dismissal in favor of Dr. Patel and Mid-Ohio, but the Fifth District Court of Appeals reversed that ruling.

On July 21, 2023, the Richland County Court of Common Pleas dismissed Defendants Dr. Patel and Mid-Ohio. *T.R. 36, Order on Motion to Dismiss filed July 21, 2023 ("Dismissal Order"), pp. 1-7*. The Court found that Plaintiff Lewis "failed to issue a summons to any of the John Doe Defendants at the time that the complaint was filed or any time prior to the filing of the amended complaint." *Dismissal Order, p. 2*. Finding she had "completely failed to even request service of the original complaint on any of the John Doe Defendants," the court held she had not complied with Civ.R. 15(D):

> [T]he purpose of R.C. § 2323.451 (D) is to allow for the amendment of a medical complaint past the statute of limitation when new claims are **discovered** through the discovery process. It does not provide for simply substituting names for parties known but unnamed in the original complaint. Without following the procedure under Civ.R. 15(D) for identifying John Doe Defendants, the Plaintiff can simply claim that any substituted John Doe is a "new defendant" and not one originally contemplated when the complaint was first filed. This is why compliance with Civ.R. 15 is imperative. (Emphasis in original.)

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Id., p. 6. Dismissing all claims against Dr. Patel and Mid-Ohio with prejudice, the court entered judgment, finding there was "no just cause for delay." *Id., p. 7; see Civ.R. 54(B).*

Plaintiff Lewis initiated her appeal of the Dismissal Order by timely filing her Notice of Appeal on August 17, 2023. *T.R. 38.* Lewis assigned the dismissal with prejudice as error, arguing that R.C. 2323.451(D)(1) generally "permits joinder of 'additional' defendants within 180 days following the conclusion of the limitations period for medical claims in R.C. 2305.113, without limiting its application to 'newly discovered' health care providers specifically uncovered during the discovery procedures." *Index of Record on Appeal filed June 27, 2024, Appellate Record ("A.R.") 8, Brief of Plaintiff-Appellant, Christine Lewis filed October 6, 2023 ("Lewis' Fifth Dist. Brief"), p. 6.* She reasoned that nothing in the enactment "mandated strict compliance with Civ.R. 15(D)," as it "provided an alternative way to name unidentified defendants without violating the statute of limitations." *Id.* Rather, she explained that text in R.C. 2323.451(A)(2) demonstrates that "subsection (D)(1) operates as a true alternative to the 180-day letters that have long been available to extend the limitations period under R.C. 2305.113(B)(1)." *Id.*

Defendants Dr. Patel and Mid-Ohio speculated in response that by passing R.C. 2323.451, the General Assembly only "intended to allow an additional 180 days for 'other' claims or defendants, which were discovered after the complaint was filed, to be added to the litigation," but did not "extend the statute of limitations by 180 days for 'any' potential defendant." *A.R. 9, Brief of Defendants-Appellees Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP filed October 26, 2023 ("Defendants' Fifth Dist. Brief"), p. 10.* They responded to Plaintiff Lewis' "contention that any defendant could be added to a timely filed lawsuit up to 180 days after the statute of limitations passed for any reason and without restrictions" by complaining that such a law "would eviscerate the

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

protections afforded by the statute of limitations." *Id., p. 12*. They saw it as "illogical" to "end the protection of Ohio's one-year medical malpractice statute of limitations" by extending it as Lewis had argued. *Id*. They urged the Fifth District to hold that since Lewis "made a claim against and identified negligent John Does," she "cannot now add the John Doe Unknown Defendant she identified but failed to serve" because "to do so would eliminate the requirements of Rule 15." *Id., p. 8*. And still relying on the premise that R.C. 2323.451 did not extend the statute of limitations, they argued Lewis could not "avail herself of the relation-back allowed by Civil Rule 15(C)" without having followed the John Doe provisions of Civ.R. 15(D). *Id., p. 6*. Ultimately, they declared that "The Amended Complaint is untimely and cannot be salvaged by substituting Appellees with John Doe defendants from the original October 18, 2022 Complaint." *Id*.

After briefing and argument, the Fifth District panel reversed the trial court's order dismissing Defendants Dr. Patel and Mid-Ohio and remanded the matter for further proceedings. *Lewis v. MedCentral Health Sys.*, 2024-Ohio-533, ¶ 19 (5th Dist.). While R.C. 2323.451(D)(1) "refers to Civ. R. 15 for the procedure required to amend a complaint," the court of appeals explained that it "does not clearly set forth it applies only to newly discovered claims or newly discovered defendants." *Lewis* at ¶ 11. It "does not specifically require Civ. R. 15(D) to be used for defendants contemplated but not identified at the time the complaint is filed." *Id*. The court considered R.C. 2323.451(C), which "specifically states during discovery, the parties may discover the existence or **identity** of claims or defendants" and "appears to directly address the circumstances of the instant case." (Emphasis in original.) *Id*. But the court of appeals thought the word "additional" could be susceptible to more than one meaning, making it "ambiguous on its

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

face as to whether it applies solely to newly discovered claims or defendants, or also to newly identified but originally contemplated claims and defendants." *Id.*

Relying on this Court's decision in *State v. Jackson*, 2004-Ohio-3206, the Fifth District considered the statute's purpose and legislative history, which "indicates the intent was to end the practice of initially joining any defendant who could possibly have been involved in the patient's treatment which led to the malpractice claim." *Lewis* at ¶ 12-13. The unanimous panel explained:

> [T]he process set forth in R.C. 2323.451(C) and (D) is intended to allow the plaintiff to file the action against the larger entity, such as the hospital and/or any known and identified defendants, within the applicable statute of limitations of one year, and after identifying through discovery any other specific defendants involved in the plaintiff's care, or any other claims of negligence, add those via amendment to the complaint within the 180 day time frame set forth in the statute.

Id. at ¶ 13. Noting that the remedial purpose of statutes of limitations requires liberal construction to allow cases to be decided on the merits, as this Court recognized in *Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 2011-Ohio-1961, the Court extended that logic to R.C. 2323.451, finding it was "remedial" because it "provides an extension of the statute of limitations for additional claims and defendants." *Lewis* at ¶ 14.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Finally, the court of appeals relied on language in R.C. 2323.451(A)(2) expressing that the joinder mechanism in subsection (D)(1) "may be used in lieu of, and not in addition to" the 180-day letters in R.C. 2305.113(B)(1), another mechanism that can extend the statute of limitations. *Lewis* at ¶ 15. "If R.C. 2323.451 applied solely to claims or defendants not originally contemplated or generally known when the complaint was initially filed, the procedure would be unavailable to a plaintiff who has sufficient knowledge of the claim and defendants to comply with 2305.113(B)(2)." *Id.* at ¶ 16. That

"the legislature has clearly stated a plaintiff may use one procedure or the other," but not "both," shows "the legislature intended R.C. 2323.451 to not be limited solely to claims and defendants which were not known or contemplated by the plaintiff at the time the complaint was filed." *Id.*

Defendants Dr. Patel and Mid-Ohio appealed to this Court on March 29, 2024. This Court accepted the matter on June 11, 2024. *06/11/2024 Case Announcements*, 2024-Ohio-2160, p. 2.

ARGUMENT

Two propositions of law were accepted for further review:

> **PROPOSITION OF LAW I: R.C. § 2323.451 DOES NOT ELIMINATE THE REQUIREMENT FOR JOHN DOE SERVICE FOUND IN RULE 15(D).**
>
> **PROPOSITION OF LAW II: R.C. § 2323.451 ONLY ALLOWS ADDITION OF A NEWLY DISCOVERED CLAIM OR DEFENDANT WITHIN 180 DAYS AFTER THE END OF THE STATUTE OF LIMITATIONS AND DOES NOT ALLOW THE ADDITION OF CLAIMS OR DEFENDANTS WHO WERE KNOWN TO PLAINTIFF PRIOR TO THE EXPIRATIONS OF THE STATUTE OF LIMITATIONS.**

MISJ, p. 7, 10. This Court should reject both propositions, which Plaintiff Lewis will analyze together for ease of discussion.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

I. This appeal should be dismissed as improvidently accepted because Dr. Patel and Mid-Ohio pivoted from the fundamental premise they relied upon to argue that this dispute presents issues of public or great general interest.

This Court traditionally expects the appealing party to provide "a legal argument related" to the proposition of law that was "accepted for review in each case" and not "beyond the scope of the issue over which [it] granted jurisdiction." *See State v. Jordan*, 2023-Ohio-2666, ¶ 3. Defendants Dr. Patel and Mid-Ohio violated that cardinal rule by admitting that R.C. 2323.451 *does* extend the statute of limitations, thereby abandoning

the alarmist accusations of judicial activism that they previously identified when urging this Court to accept jurisdiction. *Compare Defendants' Merit Brief, p. 5, 8 with MISJ, p. 1-3.* In such instances when this Court determines "there is no . . . question of public or great general interest," it will "dismiss the case as having been improvidently accepted or summarily reverse or affirm on the basis of precedent." *S.Ct.Prac.R. 7.10*. This Court should not reward this bait-and-switch effort, and the appeal should be dismissed.

In their request for further review, Defendants Dr. Patel and Mid-Ohio asserted that the Fifth District's ruling "excused [Plaintiff Lewis], and all future plaintiffs, from compliance with Civ.R. 15 (D)'s service requirements." *MISJ, p. 1.* They urged that it was the "Fifth District's Opinion," as opposed to the new statute, that "serves to extend the medical malpractice statute of limitations to one and one-half years." *MISJ, p. 2.* Sounding the alarm, they argued:

> The Opinion goes beyond merely eliminating service requirements for John Doe physicians, but also extends to physicians whose alleged negligence and names are known to a medical malpractice plaintiff before the statute of limitations expires. As perhaps an unintended consequence of the Fifth District's Opinion, it will be sufficient in future cases involving a medical claim to timely file a lawsuit against one defendant, such as a hospital, and then amend the complaint to add other defendants up to six months after the statute of limitations expires even though the names of the "new" defendants were known.

Id. Their point was clear. They saw "no indication in R.C. § 2323.451 that the legislature intended to change the medical malpractice statute of limitations found in R.C. § 2305.11" and argued it was the Fifth District that "created a new statute of limitations." *Id.* With a judicially extended statute of limitations, they argued "there is no need to attempt service on a John Doe physician following the passage of R.C. § 2323.451 into law" and "no need for a plaintiff to include defendants in the first filing of the lawsuit." *Id., pp. 2-3.*

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

On this intrinsic statute-of-limitations premise, Dr. Patel and Mid-Ohio supplied Proposition of Law I, proclaiming "[t]here is no language in R.C. § 2323.451 that excuses a plaintiff from completing personal service on a John Doe defendant." *MISJ, p. 7-8*. And because Plaintiff Lewis "did not allege that she learned of the claims against Defendants-Appellants, or the existence of Defendants-Appellants, through discovery" under R.C. 2323.451(C), they offered Proposition of Law II, asserting their joinder should not have been permitted "after the statute of limitations has passed." *Id., p. 11, 13*.

The arguments presented to this Court in the opening merit brief differ starkly in that they revolve far more narrowly around Civ.R. 15(D), admitting that R.C. 2323.451 *can* "extend the statute of limitations for medical claims" unless a claim is pled "against a defendant the plaintiff can identify but whose real name is unknown and designated as a John Doe in a complaint." *Defendants' Merit Brief, p. 5; Id., p. 8* ("R.C. 2323.451 simply does not apply to the situation where the plaintiff can identify a defendant before the statute of limitations expires but does not know that defendant's name."). Dr. Patel and Mid-Ohio point out that John Doe defendants are "'**included or named in the complaint**.'" (Emphasis in original.) *Id., p. 9*, quoting *R.C. 2323.451(C)*. And on that premise, they implore this Court to rule that Plaintiff Lewis' "amended complaint did not add an additional defendant but merely attempted to correct the names of defendants who were already parties in the action." *Id., p. 10*.

The great irony here is that the trial court dismissed Dr. Patel and Mid-Ohio on July 21, 2023, far less than one year after the matter was initially commenced on October 18, 2022. If these defendants were so clearly identified in the initial complaint that R.C. 2323.451 could not extend the statute of limitations and personal service was strictly required under Civ.R. 15(D), why did the trial court deny Lewis the full "one year" to

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

obtain personal service on them under Civ.R. 3(A) and timely commence the action? The reason is that the narrower John Doe argument now offered to this Court was never really contemplated by the trial court. The trial court instead ruled that "for this statute to apply, the Plaintiff must comply with Civ.R. 15 in amending the complaint," including "with Civ.R. 15(D)," an odd proposition nobody is now defending. *Dismissal Order, p. 6.*

Dr. Patel and Mid-Ohio now admit some error in the trial court's ruling by pivoting to the argument that the statute and Civ.R. 15(D) can never apply together as a matter of law because John Doe defendants are not additional defendants. Are those really the abstract issues this Court considered accepting and upon which it ordered briefing? No, they are not. Instead of hearing a dispute about an unwarranted judicial extension of the statute of limitations for medical malpractice, this Court now must parse arguments about whether certain parties, who weakly claim to have been the specific ones identified as John Doe defendants in this unique and uncommon case, are "additional" enough to have fallen within a statute that admittedly *does* extend the statute of limitations.

There are many problems with this tactic, and Plaintiff Lewis will still address those going to the merits of the Defendants' unfounded arguments. At the very least, the fact that the statute of limitations for medical claims has been extended under circumstances that previously could have been dealt with using the John Doe process undercuts any argument that Ohio really needs another decision about the procedures in Civ.R. 15(D). Perhaps more fundamentally, what purpose could a statute extending the medical malpractice statute of limitations strictly for unidentified defendants and undiscovered claims possibly serve? This Court held long ago in *Oliver v. Kaiser Community Health Found.*, 5 Ohio St. 3d 111 (1983), and again in *Hershberger v. Akron City Hosp.*, 34 Ohio St. 3d 1 (1987), that the existing statute of limitations incorporates a

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

discovery rule. Why would the General Assembly or this Court need to get involved in maintaining existing and established legal principles? This Court would not normally accept such an appeal.

The arguments made in the opening merit brief are not the same ones that were offered before this Court's jurisdictional deadline and accepted as matters of statewide importance. That abuse of this Court's role in the judicial order should not be permitted. The appeal should be dismissed, and the Fifth District's opinion should be left in place until and unless a real flaw in its logic is identified by a party before the jurisdictional time limits have passed and *actually defended* on the merits.

II. The Fifth District's decision should be affirmed on the alternative basis that R.C. 2323.451(D)(1) and (2) clearly and unambiguously extend the statute of limitations to permit joinder of any additional medical claim or defendant in an otherwise timely action.

Plaintiff Lewis has consistently argued that R.C. 2323.451(D)(1) clearly and unambiguously permitted her to abandon her earlier efforts under Civ.R. 15(D) and "timely" join Defendants Dr. Patel and Mid-Ohio in her amended complaint within the period defined in R.C. 2323.451(D)(2). *Lewis' Memo. Opp., pp. 1-3; Lewis' Fifth Dist. Brief, p. 6.* Although the Fifth District concluded that R.C. 2323.451(D)(1) was written with some ambiguity, Lewis asks this Court to affirm on the alternative ground that R.C. 2323.451(D)(1) clearly permitted her to commence the action against Dr. Patel and Mid-Ohio precisely as she did, notwithstanding the abandoned effort to include John Doe defendants. This Court has expressed time and time again that it "will not reverse a correct judgment merely because erroneous reasons were given for it." *State ex rel. Neguse v. McIntosh*, 2020-Ohio-3533, ¶ 10; *Salloum v. Falkowski*, 2017-Ohio-8722, ¶ 12; *Joyce v. Gen. Motors Corp.*, 49 Ohio St.3d 93, 96 (1990). So, because R.C. 2323.451(D)(1)

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

expressly provides additional time to join "any additional medical claim or defendant" to an otherwise timely action as explained below, the decision and judgment issued below should still be affirmed.

A. The applicable standards of review require this Court to make its own legal determinations while limiting its focus to the facts pled in the complaint.

1. A trial court possesses limited authority to dismiss an action.

Defendants Dr. Patel and Mid-Ohio premised their request for dismissal upon Civ.R. 12(B)(6), which authorizes such relief for "[f]ailure to state a claim upon which relief can be granted." They bore a heavy burden in this regard, as this Court has established:

> In order for a court to dismiss a complaint for failure to state a claim upon which relief can be granted (Civ.R. 12(B)(6)), it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. (*Conley v. Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80, followed.)

O'Brien, 42 Ohio St.2d 242, at syllabus. *See also State ex rel. Celebrezze v. Environmental Ents., Inc.*, 53 Ohio St.3d 147, 152 (1990). All allegations in the complaint must be accepted as true. *Greeley*, 49 Ohio St.3d at 230-231. The plaintiff is not required to prove his or her case at the pleading stage without the benefit of discovery. *York v. Ohio State Hwy. Patrol*, 60 Ohio St.3d 143, 144-145 (1991).

Furthermore, the trial court must scrupulously restrict its analysis to the four corners of the complaint. *NorthPoint Properties, Inc. v. Petticord*, 2008-Ohio-5996, ¶ 15 (8th Dist.); *Witcher v. Fairlawn,* 1993 WL 243803, *2 (9th Dist. July 7, 1993); *Plazzo v. Nationwide Mut. Ins. Co.*, 1992 WL 150282, *2 (9th Dist. June 24, 1992). Unless a motion to dismiss is converted to a motion for summary judgment in accordance with Civ.R.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

12(B), documents attached to the submission or matters outside the pleadings must not be considered. *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn.*, 72 Ohio St.3d 94, 96 (1995).

Motions to dismiss on the pleadings under Civ.R. 12(B)(6) are "viewed with disfavor" and "rarely granted." *Wilson v. Riverside Hosp.*, 18 Ohio St.3d 8, 10 (1985); *see also Slife v. Kundtz Props., Inc.*, 40 Ohio App.2d 179, 182 (8th Dist. 1974); *Caraballo v. Cleveland Metro. School Dist.*, 2013-Ohio-4919, ¶ 5 (8th Dist.). A dismissal is warranted only when there is no possibility of a recovery as a matter of law:

> A complaint should not be dismissed for failure to state a claim merely because the allegations do not support the legal theory on which the plaintiff relies. Instead, a trial court must examine the complaint to determine if the allegations provide for relief on any possible theory.

Fahnbulleh v. Strahan, 73 Ohio St.3d 666, 667 (1995).

2. Appellate courts make their own legal determinations, without deference, on review of a trial court's dismissal order.

On appeal, an "order granting a Civ.R. 12(B)(6) motion to dismiss is subject to de novo review." *Perrysburg Twp. v. Rossford*, 2004-Ohio-4362, ¶ 5; *Sherman v. Ohio Pub. Employees Retirement Sys.*, 2020-Ohio-4960, ¶ 13; *White v. King*, 2016-Ohio-2770, ¶ 13. No deference to the trial court's ruling is owed. *E.g., Alexander Local School Dist. Bd. of Edn. v. Albany*, 2017-Ohio-8704, ¶ 22 (4th Dist.)

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

B. The rules of statutory construction require this Court to give legal text its plain meaning as expressed by the words used.

The trial court's Dismissal Order turned on the meaning of the provisions of R.C. 2323.451. *Dismissal Order, p. 1-7.* When considering a statute, this Court will "'ascertain and give effect to the legislature's intent,' as expressed in the plain meaning of the statutory language." *State v. Pountney*, 2018-Ohio-22, ¶ 20, quoting *State v. Lowe*, 2007-

Ohio-606, ¶ 9. "'The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction.'" *State v. Hairston*, 2004-Ohio-969, ¶ 12, quoting *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus. Words may not therefore be added or deleted from a statute through judicial action. *State v. Johnson*, 2008-Ohio-69, ¶ 15; *State v. Hughes*, 86 Ohio St.3d 424, 427 (1999). Importantly, "R.C. 1.42 guides" this Court's "analysis, providing that '[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage.'" *Pelletier v. Campbell*, 2018-Ohio-2121, ¶ 14. The various parts of a statute are not to be taken in isolation:

> It must be construed as a whole and given such interpretation as will give effect to every word and clause in it. No part should be treated as superfluous unless that is manifestly required, and the court should avoid that construction which renders a provision meaningless or inoperative.

State ex rel. Myers v. Bd. of Edn. of Rural School Dist. of Spencer Twp., 95 Ohio St. 367, 372-373 (1917).

If the language of a statute "is not ambiguous," then the Court "need not interpret it" but "must simply apply it." *Hairston*, 2004-Ohio-969, at ¶ 13; *see also Summerville v. Forest Park*, 2010-Ohio-6280, ¶ 18-19; *State v. Gordon*, 2018-Ohio-1975, ¶ 8. Any "'inquiry into legislative intent, legislative history, public policy, the consequences of an interpretation, or any other factors identified in R.C. 1.49 is inappropriate'" and will not justify a ruling contrary to the plain text of an unambiguous statute. *Jacobson v. Kaforey*, 2016-Ohio-8434, ¶ 8, quoting *Dunbar v. State*, 2013-Ohio-2163, ¶ 16. Yet in the absence of any ambiguity, legislative materials may still be useful to confirm that the General Assembly truly intended what it otherwise said through the plain text it had utilized. *State*

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

v. Gonzales, 2017-Ohio-777, ¶ 14-17; *State v. Whitfield*, 2010-Ohio-2, ¶ 18-21; *State ex rel. Fockler v. Husted*, 2017-Ohio-224, ¶ 19.

C. R.C. 2323.451(D)(1) briefly extends the statute of limitations as to "any additional defendants" once a claim has been timely commenced against at least one other defendant.

There is little doubt that the plain and ordinary meaning of the terms of R.C. 2323.451(D)(1) permitted Plaintiff Lewis to add "any additional" defendants to her timely medical negligence action through her Amended Complaint submitted within the period defined in subsection (D)(2). The statute "means what it says." *Everhart v. Coshocton Cty. Mem. Hosp.*, 2023-Ohio-4670, ¶ 1. It directs, in pertinent part:

> Within the period of time specified in division (D)(2) of this section, the plaintiff, in an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure, may join in the action any additional medical claim or defendant if the original one-year period of limitation applicable to that additional medical claim or defendant had not expired prior to the date the original complaint was filed. (Emphasis added.)

R.C. 2323.451(D)(1). The following section defines how much additional time—an amount "equal to the balance of any days remaining from the filing of the complaint to the expiration of that one-year period of limitation, plus one hundred eighty days from the filing of the complaint." *R.C. 2323.451(D)(2).* Separately, R.C. 2323.451(C) directs that a plaintiff "may seek to discover the existence or identity of any other potential medical claims or defendants" within the same time period. (Emphasis added.) *R.C. 2323.451(C).* But nothing in subsection (D) limits the joinder of "any additional" defendants strictly to those that were found during the discovery period. As the unequivocal text of the enactment says, the General Assembly understood that it would provide an extension for those who have already filed a timely medical claim against

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

someone else to join *any* additional defendants through an amendment under Civ.R. 15.

Confirming the now-admitted point that this law extends the statute of limitations, the General Assembly made it clear that this joinder mechanism "may be used in lieu of, and not in addition to, division (B)(1) of section 2305.113 of the Revised Code." *R.C. 2323.451(A)(2)*. Much like the new law, R.C. 2305.113(B)(1) generally permits a plaintiff with a medical claim an additional "one hundred eighty days" to commence their action after giving "the person who is the subject of that claim written notice that the claimant is considering bringing an action upon that claim" so long as the notice is provided "prior to the expiration" of the one-year limitations period for such claims.

Taken together with these other provisions, the unmistakable and unambiguous text of R.C. 2323.451(D)(1) permits joinder of "any additional" defendants to a medical malpractice case timely commenced against at least one other defendant so long as that is accomplished within 180 days following the end of the one-year limitations period. This statutory right was created as a freely available alternative to utilizing 180-day letters to extend the time in which such claims may be commenced, and its use effectively results in the same outcome. As employed in R.C. 2323.451(A)(2), the word "lieu" refers to alternative options:

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

> **lieu, n.**
>
> In phrases. in (the) lieu of: in the place, room, or stead of (cf. instead, adv. 1); in exchange or return for, as a payment, penalty, or reward for.

Oxford English Dictionary, *Lieu* (accessed Sept. 3, 2024)[1]; Merriam-Webster, *Lieu* (accessed Sept. 3, 2024) ("**in lieu**: INSTEAD, **in lieu of**: in the place of: instead of")[2];

[1] Available online at: https://www.oed.com/search/dictionary/?scope=Entries&q=lieu
[2] Available online at: https://www.merriam-webster.com/dictionary/lieu

Cambridge Dictionary, *Lieu* (accessed Sept. 3, 2024) (same)[3]. So, instead of extending her statute of limitations for *all* claims by delivering 180-day letters to *all* potential defendants, Plaintiff Lewis was permitted to simply add "any additional" defendants within a similar period following the timely filing of a complaint against some other defendants for the same iatrogenic injuries. *R.C. 2323.451(D)(1)*. This is probably the best of several reasons to reject the argument that the new statute "does not extend the statute of limitations for claims against a defendant the plaintiff can identify but whose real name is unknown and designated as a John Doe in a complaint." (Emphasis added.) *Defendants' Merit Brief, p. 5.* Of what use would this provision be as an alternative to a 180-day letter if it did not "apply to the situation where the plaintiff can identify a defendant before the statute of limitations expires but does not know that defendant's name?" *Id., p. 8.*

Plaintiff Lewis scrupulously complied with the statutory requirements. She was seriously injured on February 14, 2022, at Defendant Mansfield Hospital's emergency room. *Am. Complaint, ¶ 5, 12-13*. On October 18, 2022, she timely commenced this action just over eight months following her fall that broke her neck, naming Mansfield Hospital as a defendant and indicating that she did not know the identity of the John Doe defendants. *Original Complaint, p. 1*. They were not separately described in detail, but were instead lumped together as ten "physicians, nurses, hospitals, corporations, health care professionals, or other entities that provided negligent medical care to CHRISTINE LEWIS individually or by their agents, apparent agents, or employees, names unknown." *Id.*

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

[3] Available online at: https://dictionary.cambridge.org/us/dictionary/english/lieu

After Lewis discovered the identities of the defendants[4] who were later added, she sought and was granted consent to file an amended complaint from Mansfield Hospital as required by Civ.R. 15(A). *Mansfield Answer to Am. Complaint, p. 1.* On April 14, 2023, she filed her Amended Complaint in strict compliance with R.C. 2323.451(D)(1), joining all the additional defendants merely 59 days after the limitations period otherwise would have concluded on February 14, 2023. *Am. Complaint, ¶ 1-3, 6-11.* Neither Defendants Dr. Patel and Mid-Ohio nor the trial court have ever identified any further requirements *actually drawn from the text* of R.C. 2323.451 that would justify dismissal. R.C. 2323.451(D)(1) thus permitted joinder of Dr. Patel and Mid-Ohio through Lewis' amended complaint. It was pure legal error to dismiss them with prejudice.

D. The trial court erred in applying the new law in R.C. 2323.451.

The trial court failed to apply the unambiguous terms of R.C. 2323.451 and violated the most basic rules of statutory construction to justify its dismissal of Defendants Dr. Patel and Mid-Ohio. As a threshold matter, the Dismissal Order effectively applied the law as it had existed prior to the enactment of R.C. 2323.451, thus negating the new legislation. Before the new legislation took effect, a plaintiff was limited to Civ.R. 15(D) and thus had to timely name and serve a John Doe defendant in a civil action. An amendment under Civ.R. 15(D) would relate back to the timely commencement of the complaint only if all the strict requirements of this process had been met. *E.g., LaNeve v. Atlas Recycling, Inc.*, 2008-Ohio-3921, ¶ 8-12. The timely filed complaint had to

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

[4] To the extent that Dr. Patel and Mid-Ohio claim their identities were discovered any earlier, they simultaneously admit that any records that might have identified them are "outside the pleadings" and therefore irrelevant at this phase. *Defendants' Merit Brief, p. 2, fn. 2. See NorthPoint Properties*, 2008-Ohio-5996, at ¶ 15 (8th Dist.); *Witcher,* 1993 WL 243803, at *2 (9th Dist.); *Plazzo*, 1992 WL 150282, at *2 (9th Dist.).

"sufficiently identify that [unknown defendant] to facilitate obtaining personal service on that defendant," which can become an impossible task in all but the rarest of circumstances. *Erwin v. Bryan*, 2010-Ohio-2202, ¶ 31. So, as an initial consideration, this Court should ask whether the purpose of adopting the entirely new provision in R.C. 2323.451(D)(1) was to make new law permitting prompt and realistic joinder of additional defendants to medical claims or to maintain the prior system as it had been found within the Ohio Rules of Civil Procedure.

The purpose of legislation is—of course—to make new law. When the Honorable Robert R. Cupp signed on as the first sponsor of Am. Sub. H.B. 7 during the 132nd General Assembly, he was no doubt aware of the ruling he had written for the majority in *LaNeve* as an Associate Justice of this Court, which described the existing process for dealing with unidentified defendants as the limitations period approached its end. Ohio Legislative Service Commission, *Am.Sub.H.B. 7 Final Analysis* ("Final Analysis"), p. 1 (accessed Oct. 4, 2023)[5]. (listing "Cupp" as the first sponsor); *LaNeve* at ¶ 8-12. And when then-Representative Cupp offered written testimony during the first House Civil Justice Committee hearing on the bill on February 15, 2017, he described collaborating with the "Ohio State Medical Association and the Ohio Hospital Association" before explaining:

> [T]he bill seeks to reduce the need to sweep into the lawsuit unnecessary defendants when litigation is commenced. When a lawsuit is filed within the statute of limitations, a plaintiff will be granted a period of time (180 days) after the initial filing of a medical claim to name additional defendants where there is evidence to believe they may have liability. As a result, the less than desirable practice under current law of initially joining numerous defendants in a lawsuit who are subsequently dismissed from the case after discovery gets

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

[5] Available online at:
https://www.legislature.ohio.gov/download?key=13125&format=pdf

> underway (and it becomes evident they are not implicated), can be minimized.

Representative Bob Cupp, *Sponsor Testimony – H.B. 7*, p. 2 (accessed Sept. 3, 2024)[6].

If the General Assembly had intended to just maintain the status quo, why pass this new provision at all? The legislators also could have broadened R.C. 2323.451(F), which strictly maintained the rules about "commencement of the period of limitation for medical claims that are asserted or defendants that are joined after the expiration of the one-hundred-eighty-day period." It did not. In fact, R.C. 2323.451(F) specifically enumerated that the new law would not "modify or affect" any provision of the Civil Rules, indicating that it should be considered separately from other procedural mechanisms to add parties.

Together, the plain text of R.C. 2323.451(D)(1) and the legislative history preceding its enactment indicate that a positive change in the law was intended. R.C. 2323.451 offered a *new* and *independent* method to join additional defendants within 180 days following the conclusion of the medical-claim limitations period. To interpret the statute as the trial court did, mandating that "for this statute to apply, the Plaintiff must comply with Civ.R. 15 in amending the complaint," including "with Civ.R. 15(D)," not only adds terms that do not exist but also frustrates the General Assembly's efforts as explained by Representative Cupp by maintaining the *status quo* in place prior to the enactment, rendering it useless. *Dismissal Order, p. 6.*

From there, the trial court's ruling collapses like a house of cards. It was error to hold that R.C. 2323.451 did not allow joinder of known but still-unidentified defendants following the conclusion of the limitations period and that only relation back through

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

[6] Available online at: https://www.legislature.ohio.gov/legislation/132/hb7/committee

Civ.R. 3(A), 15(C) and 15(D) could have saved the claims against Defendants Dr. Patel and Mid-Ohio. *Dismissal Order, p. 3-6*. Nothing in the text of R.C. 2323.451(D)(1) supports that view. Now that these defendants have admitted that the statute does extend the statute of limitations, what purpose would relation back serve? And how could the trial court really have blamed Lewis for failing to achieve relation back fully three months before the one-year period for service in Civ.R. 3(A) had ended?

The trial court's interpretative sense that the new law's only "purpose" was to permit joinder "when new claims are **discovered** through the discovery process" is totally untethered from the actual text of the actual statute. (Emphasis added.) *Dismissal Order, p. 6*. Even if R.C. 2323.451(D)(1) were expressly limited by subsection (C), a plaintiff is permitted during the 180-day window to "seek to discover the existence or identity of any other potential medical claims or defendants that are not included or named in the complaint." (Emphasis added.) *R.C. 2323.451(C)*. The trial court thus deleted language from the law when it held that "a plaintiff who does not know the name of the defendant must still identify the defendant in the original complaint" even after this law was passed. *Dismissal Order, p. 6*. That was the very holding of *Erwin* years earlier in 2010. *Erwin*, 2010-Ohio-2202, ¶ 40 ("Although a plaintiff may designate a defendant whose name is unknown by any name and description, the complaint must nonetheless sufficiently identify that specific party so that personal service may be made upon its filing."). By using the word "identity" in R.C. 2323.451(C), the General Assembly gave a clear indication that defendants who remained unidentified when a medical negligence complaint was filed, not just unnamed, *may* now be identified and joined within 180 days without originally naming them as a John Doe before the limitations period closes. And the phrase "not included or named in the complaint" totally undercuts the defendants'

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

argument that the statute does not apply to defendants that *were* somehow included in an earlier complaint but *not* named. *R.C. 2323.451(C). Defendants' Merit Brief, p. 5, 8.*

But as explained above, nothing in the text of the enactment indicates that R.C. 2323.451(D)(1) is limited by scope of discovery that occurs under subsection (C). The trial court was therefore wrong to hold otherwise based upon mere implications in the "legislative history." *Dismissal Order, p. 5.* To be sure, there are no direct references between these two provisions, thus indicating they are freestanding rules that operate separately. *See Wilson v. Durrani*, 2020-Ohio-6827, ¶ 29 (holding that the statute of repose "notably does not contain an exception for application of the saving statute, and we may not read one into the statute by implication."). Accordingly, there is no textual reason why a plaintiff cannot simply join "any additional" defendants to a timely filed medical malpractice action within 180 days following the conclusion of the limitations period even if their existence, negligence, or identity was known when the original complaint was filed.

The General Assembly clearly intended to allow this kind of amendment through R.C. 2323.451(A)(2), which permits the use of joinder as a direct alternative to the 180-day letters permitted by R.C. 2305.113(B)(1) for plaintiffs aware of potential claims against known and named defendants. After all, it is not merely the identity of an unnamed defendant that can be discovered under R.C. 2323.451(C), but also the "potential medical claims" against them. Nobody could read those words and think that all medical providers involved in care, even those whose names were not known yet, would have to be joined in an action before the initial one-year statute of limitations was over. Rather, since the basis for a potential claim may be discovered during the 180-day period, it only makes sense that the decision to join the relevant party could be made later

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

too. In these ways, the trial court judicially engrafted its own cross-reference between R.C. 2323.451(C) and (D)(1) into the law while effectively deleting subsection (A)(2) and the reference to discovery of potential medical claims in subsection (C).

Nor is there any reason to think that R.C. 2323.451(D)(1) requires strict compliance with the dictates of Civ.R. 15(D) as the trial court held. *Dismissal Order, p. 6.* With regard to substantive rights such as the limitations periods in which legal claims must be commenced, it is the statute that prevails over any conflicting judicial rules and not the other way around. *Erwin*, 2010-Ohio-2202, at ¶ 30 ("We cannot, through a court rule, alter the General Assembly's policy preferences on matters of substantive law, and Civ.R. 15(D) therefore may not be construed to extend the statute of limitations beyond the time period established by the General Assembly."). As Justice Cupp observed for a majority of the Court on another occasion, "it is not the role of the courts to establish their own legislative policies or to second-guess the policy choices made by the General Assembly." *Kaminski v. Metal & Wire Prods. Co.*, 2010-Ohio-1027, ¶ 61. So, why would legislators have had to worry about superseding procedural rules at all? Why could the General Assembly not be permitted to "eliminate the protections of Civ.R. 15(D) for defendants in medical claims" as Defendants Dr. Patel and Mid-Ohio have decried? *Defendants' Merit Brief, p. 5.* The procedural rules are not some monolithic decree to which all Ohioans owe obeisance despite what the other branches of government choose to do, and "the obligation to comply with Civ.R. 15" will only go so far as the Modern Courts Amendment can take it. *Id.* If "no plaintiff would follow the rule" in a medical malpractice case anymore following the enactment of the clear text in R.C. 2323.451(D)(1), that reflects nothing more than a value-judgment by the General Assembly that it is unquestionably entitled to make. *See Id., p. 12-13.* There can be no

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

doubt that "statutes of limitation are a legislative prerogative and their operation and effect are based upon important legislative policy." *Wetzel v. Weyant*, 41 Ohio St.2d 135, 138 (1975).

Even if the procedural rules promulgated by this Court could override valid legislative enactments on substantive matters, the outcome would still be the same. Civ.R. 15(D) is not the only provision in "rule 15 of the Rules of Civil Procedure." *R.C. 2323.451(D)(1)*. Nor does it expressly regulate joinder by amendment. All it says about amendments is that a complaint must be "amended accordingly" after a defendant's previously unknown "name is discovered." Civ.R. 15(D). For what it is worth, that is exactly what Lewis did as she tried to utilize R.C. 2323.451(D)(1).

Yet R.C. 2323.451(D)(1) directs that it can be utilized through "an amendment to the complaint pursuant to rule 15 of the Rules of Civil Procedure." Amendments to a complaint are only accomplished 'pursuant to' Civ.R. 15(A) and (B). Nothing in this text prohibits a plaintiff from utilizing the consent-amendment process in Civ.R. 15(A) to join previously unidentified parties under their proper names, as Plaintiff Lewis did in this case. While it may have been clearer what she was doing had Lewis originally filed suit against Mansfield Hospital alone, nothing in R.C. 2323.451(D)(1) prohibited her from abandoning her earlier inclusion of John Doe defendants and utilizing this new statutory mechanism as an alternative means to accomplish the same goal; pleading timely claims against doctors whose names she had not known when the case was originally filed. Evidence of this abandonment was not within the four corners of the amended pleadings, and it was improper for the Court to consider in any case.

For each of these reasons, the trial court's Dismissal Order was in error, and it was properly reversed. Plaintiff Lewis strictly complied with the unambiguous text of R.C.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

2323.451(D)(1), and her claims against Defendants Dr. Patel and Mid-Ohio should have been permitted to proceed. This Court should affirm the Fifth District's judgment on that alternative basis.

E. Dr. Patel and Mid-Ohio have not provided this Court with any compelling analysis about the new law in R.C. 2323.451.

Importantly, Defendants Dr. Patel and Mid-Ohio "are not contending that Lewis identified them with sufficient detail to satisfy Civ.R. 15(D)" and question whether she "provided the requisite specificity" to engage the rule. *Defendants' Merit Brief, p. 1, fn. 1.* That is why it is so absolutely weird that they later argue she had "identified and sued the emergency department care providers, although under fictitious names," such that "they were not additional defendants" and "R.C. 2323.451 did not extend the statute of limitations." *Id., p. 4.* They insist several times that Lewis decided to "sue a John Doe physician and his John Doe corporate employer," despite that this is starkly at odds with the plain text of the original complaint. *Id., p. 7, 9-10*. Which is it? Were they or were they not the John Does?

The trial court established, and nobody who filed a notice of appeal has challenged at any earlier stage, that Plaintiff Lewis "failed to comply with Civ.R.15(D)" at all, at least in part because "the John Doe designation is not a placeholder." *Dismissal Order, p. 6.* She aggregated ten "physicians, nurses, hospitals, corporations, health care professionals, or other entities that provided negligent medical care to CHRISTINE LEWIS individually or by their agents, apparent agents, or employees, names unknown" in a single paragraph on the caption of the first-filed complaint. *Original Complaint, p. 1.* Dr. Patel and Mid-Ohio have no basis to suggest that they were any particular one of the ten John Does, as Lewis could have been talking about ten nurses or ten hospitals. Indeed, the relevant

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

allegation in the first amended complaint, which must be taken as true for the moment, was that Dr. Patel and Mid-Ohio were "additional defendants" rather than any of the previously named ones. *Am. Complaint, ¶ 4.*

Moreover, the trial court was correct that "Civ.R. 15(D) does not authorize a claimant to designate defendants using fictitious names as placeholders." *Erwin*, 2010-Ohio-2202, at ¶ 30. If Plaintiff Lewis so clearly failed to plead claims against John Does in the first place, why would she have to follow through on the requirements of Civ.R. 15(D) before "using the rule to comply with the statute of limitations." *Defendants' Merit Brief, p. 7.* Did the trial judge really mean to imply that if no John Does had been included in the original complaint, the motion to dismiss would have been denied since Civ.R. 15(D) was irrelevant? As explained above, there is no textual reason why R.C. 2323.451(D)(1) could not be utilized even if Dr. Patel and Mid-Ohio had previously been identified as John Does, nor was there any need for relation back under the civil rules. But even if this Court rejects that premise, it cannot be lost that the defendants' arguments that Lewis had to follow through on the John Doe process still would not make any sense.

Even more vexing, Dr. Patel and Mid-Ohio totally failed to brief this Court on the potential impact, if any, of the principle that an earlier complaint must be disregarded after it is superseded by a later amended complaint. *Defendants' Merit Brief, p. 1-15.* It has long been "elementary law," and it still is the law, "that when a party substitutes an amended petition for an earlier one, this constitutes an abandonment of the earlier pleading and a reliance upon the amended one." *State ex rel. Talaba v. Moreland*, 132 Ohio St. 71, 75 (1936); *State ex rel. Barr v. Wesson*, 2023-Ohio-302, ¶ 30. This Court should "look to the amended petition and answer alone" when deciding this case, just as it has since the Gilded Age. *First Nat. Bank of Barnesville v. W. Union Tel. Co.*, 30 Ohio

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

St. 555, 569 (1876); *Raymond v. Toledo, St. L. & K.C.R. Co.*, 57 Ohio St. 271, 284 (1897). Why would Plaintiff Lewis be prevented from abandoning the John Doe process through a consent amendment under Civ.R. 15(A), especially given the availability of an extended statute of limitations pursuant to R.C. 2323.451(D)(1)? Dr. Patel and Mid-Ohio have no answer to that question, probably because there are only bad ones.

Otherwise, Defendants Dr. Patel and Mid-Ohio have only been able to feign support from a single unpublished authority, *Cox v. Mills*, Franklin C.P. No. 21-CV-365 (Dec. 29, 2021). *Defendants' Merit Brief, p. 12*. Aside from the fact that a trial court ruling is not binding on this Court, the different facts in *Cox* also render it distinguishable. There, two privately employed physicians allegedly injured the plaintiff as she sought medical treatment at the Ohio State Medical Center. *Cox* at 1-2. The plaintiffs initially filed a timely suit solely against the State facility in the Court of Claims, where the trial court believed individual defendants could not be joined as a party. *Id.* at 2, 4. A complaint was later filed against these individuals in the Franklin County Court of Common Pleas on January 19, 2021, after the conclusion of the limitations period on October 6, 2020. *Id.* at 1-4. The trial court recognized that R.C. 2323.451(D)(1) did not permit filing of a new complaint in a different court after the conclusion of a limitations period, as it only speaks to joinder of defendants into an already timely filed action. *Id.* at 4. That unique set of facts alone justified the ruling in *Cox*, and the same problem did not occur in this case.

Instead of stopping there, the *Cox* court went farther than it needed to and committed the same error of textual analysis that the lower court did here:

> R.C. 2323.451(C) does not contemplate adding new parties (or new claims) that were obvious when the case began. They must be "discovered" later.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Cox at 6. This observation overlooks the fact that R.C. 2323.451(C) does not contemplate adding new parties *at all*. It merely permits discovery about "the existence or identity of any other potential medical claims or defendants that are not included or named in the complaint" and mandates responses. *R.C. 2323.451(C)*. Only subsection (D)(1) regulates adding new parties, and nothing in its text limits who may be added based upon the results of discovery performed under subsection (C). So, for the same reasons explained above, this aspect of the logic of *Cox* should be rejected as a matter of law even if it were not unnecessary dicta.

III. If the word "additional" or any other part of R.C. 2323.451(D)(1) is ambiguous, this Court's construction of the law should be liberal and in favor of permitting plaintiffs to have their claims resolved on the merits.

Finally, to the extent this Court might find any ambiguity in the word "additional" as used in R.C. 2323.451(D)(1), the Fifth District's decision to interpret this extension of the statute of limitations liberally in Plaintiff Lewis' favor should stand. *See Lewis*, 2024-Ohio-533, at ¶ 11-14. This Court has previously explained that it "indulges every reasonable presumption and resolves all doubts in favor of giving, rather than denying, the plaintiff an opportunity to litigate" when it must construe the meaning of a statute of limitations. *Flagstar Bank*, 2011-Ohio-1961, at ¶ 7. And this case offers no obvious exception. Nobody involved has yet offered any other interpretive guidance in case interpretation might become necessary. So, just like the Fifth District, this Court should deploy liberal construction in favor of permitting such disputes to be decided on the merits when considering the "remedial" provision in R.C. 2323.451 that now concededly extends the statute of limitations for medical malpractice cases. *Lewis*, 2024-Ohio-533, at ¶ 14.

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

Plaintiff Lewis still does not understand why ambiguity in the word "additional" could matter, since R.C. 2323.451 expressly permits joinder of "any additional medical claim or defendant." (Emphasis added.) If there is more than one conceivable meaning available for the reference to 'additional' defendants in this law, all of them were expressly included within the category of defendants that may be joined under the provision. But if there is ambiguity, the rules still require this Court to affirm the decision below.

CONCLUSION

For all the foregoing reasons, this Court should dismiss this appeal as improvidently accepted or, in the alternative, affirm the sound decision and judgment of the Fifth District Court of Appeals. Costs should be borne by Defendant-Appellants Dr. Patel and Mid-Ohio.

Respectfully Submitted,

/s/ Danny M. Newman
Danny M. Newman Jr., Esq. (#0074740)
THE DONAHEY LAW FIRM, LLC

Attorneys for Plaintiff-Appellee, Christine Lewis

/s/ Louis E. Grube
Louis E. Grube, Esq. (#0091337)
Kendra N. Davitt, Esq. (#0089916)
FLOWERS & GRUBE

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX

CERTIFICATE OF SERVICE

The foregoing **Merit Brief** was served by e-mail on September 5, 2024, upon:

Kevin M. Norchi, Esq.
Steven J. Forbes, Esq.
FREEMAN MATHIS & GARY, LLP
23240 Chagrin Boulevard, Suite 210
Cleveland, Ohio 44122
kevin.norchi@fmglaw.com
steve.forbes@fmglaw.com

Attorneys for Defendant-Appellants, Anand Patel, M.D. and Mid-Ohio Emergency Physicians, LLP

Kenneth R. Beddow, Esq.
BONEZZI SWITZER POLITO &
24 West Third Street, Suite 204
Mansfield, OH 44902
kbeddow@bsphlaw.com

Attorney for Defendant, MedCentral Health Sys. dba OhioHealth Mansfield Hosp

Bradley L. Snyder, Esq.
ROETZEL & ANDRESS, LPA
41 South High Street, 21st Floor
Columbus, OH 43215
bsnyder@ralaw.com

Attorney for Defendants, TotalMed and Jacqueline Schmitz, R.N.

Mary McWilliams Dengler, Esq.
DICKIE, MCCAMEY & CHILCOTE, PC
10 West Broad Street, Ste. 1950
Columbus, OH 43215
mdengler@dmclaw.com

Attorney for Defendants, Pluto Healthcare Staffing, Inc. and Lauren Clapsaddle, RN

Richard S. Milligan, Esq.
Anthony E. Brown, Esq.
Thomas R. Himmelspach, Esq.
MILLIGAN PUSATERI CO., LPA
4686 Douglas Circle NW-P.O. Box 35459
Canton, Ohio 44735
rmilligan@milliganpusateri.com
tbrown@milliganpusateri.com
thimmelspach@milliganpusateri.com

Attorneys for Amicus Curiae, Ohio Assn. of Civil Trial Attorneys

Jonathan T. Brollier, Esq.
Maurice Wells, Esq.
Wan Q. Zhang, Esq.
EPSTEIN BECKER & GREEN, P.C.
250 West Street, Suite 300
Columbus, Ohio 43215
(614) 872.2500
JBrollier@ebglaw.com
MWells@ebglaw.com
WZhang@ebglaw.com

Attorneys for Amici Curiae, Am. Med. Assn., Ohio State Med. Assn., Ohio Osteopathic Assn., & Ohio Hosp. Assn.

Sean McGlone, Esq.
OHIO HOSPITAL ASSOCIATION
65 E. State Street, Suite 500
Columbus, Ohio 43215
sean.mcglone@ohiohospitals.org

Attorney for Amicus Curiae, Ohio Hospital Association

/s/ Louis E. Grube
Louis E. Grube, Esq. (#0091337)
FLOWERS & GRUBE

Attorney for Plaintiff-Appellee, Christine Lewis

FLOWERS & GRUBE
Terminal Tower, 40th Fl.
50 Public Sq.
Cleveland, Ohio 44113
(216) 344-9393
(216) 344-9395 FAX