IN THE SUPREME COURT OF OHIO

JEFFREY LILES,	:	
		Case No. 2025-0509
Appellee,	:	
		On Appeal from the Hamilton County Court
v.	:	of Appeals, First Appellate District
RICHARD SPORING,	:	
Appellant.	:	
	:	

MERIT BRIEF OF *AMICUS CURIÆ*, OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF APPELLEE, JEFFREY LILES

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INTRODUCTION

In *Liles*, the lower court correctly interpreted over 100 years of this Court's jurisprudence regarding the effect of a voluntary dismissal without prejudice on a case, and reasonably and correctly distinguished this Court's previous decision in *Moore v. Mt. Carmel Health Sys*., 2020-Ohio-4113. Indeed, this case does not present circumstances present in *Moore* or even at issue in *Moore*. *Moore* stands for what it says, which is that to take advantage of the savings statute, actual compliance with Rule 41(A) of the Rules of Civil Procedure is necessary, and that a court's grant of summary judgment cannot be converted to a failure other than upon the merits as though the plaintiff had voluntarily dismissed his case.

Here, the First District Court of Appeals dealt with a much different procedural scenario. The plaintiff, Liles, specifically did what was missing in *Moore*: he voluntarily dismissed his case after failing to obtain service on the defendant. He then refiled his case within the period permitted by the saving statute, and perfected service in the second case. The trial court granted summary judgment, and then the First District, interpreting *Moore* and 140 years of decisions regarding voluntary dismissals, reversed.

The *Liles* decision was a well-reasoned explanation of the existing jurisprudence regarding voluntary dismissals and attempts to commence an action. There is no question of great interest here—merely a litigant who is dissatisfied with the longstanding practice of treating voluntary dismissals without prejudice as failures other than upon the merits. This Court is urged to affirm that voluntary dismissals without prejudice continue to act as failures otherwise than upon the merits, and not engage in a massive sea-change of 130 years of continuous decisions.

IDENTIFICATION OF AMICUS CURIÆ

The Ohio Association for Justice ("OAJ") is a statewide association of attorneys whose mission is to preserve the legal rights of all Ohioans by protecting their access to the civil justice system. In this case, OAJ has an interest in protecting consumers from lax business practices and to ensuring the Seventh Amendment Right to a Jury. The undersigned files this brief in support of Appellee and urges the Court to affirm the decision of the First District Court of Appeals.

STATEMENT OF FACTS

The amicus curiae adopts and incorporates the statement of facts as presented by Appellee in his merit brief.

ARGUMENT

Proposition of Law I: If a statute of limitations has expired and a plaintiff fails to commence timely an action pursuant to Civ.R. 3(A), a subsequent Civ.R. 41(A) dismissal operates as a failure on the merits and the plaintiff may not use R.C. 2305.19(A) to revive the action.

Appellant asks this Court, for the first time in the history of Ohio civil procedure, to declare that a plaintiff's first use of a voluntary dismissal without prejudice of his or her lawsuit is a "failure upon the merits" of that suit when the voluntary dismissal comes in certain circumstances.

Courts have never been asked to "disregard[] the label" (Appellant Br., 8) and determine whether a first-time dismissal under Civ.R. 41(A) voluntarily initiated by the plaintiff is or is not a "failure upon the merits" until now, and Appellant cites no authority suggesting that this Court should do so. Appellant Sporing instead asks this Court to manufacture a rule stating that a plaintiff's voluntary dismissal becomes a failure upon the merits if service had not been perfected within one year of filing, as provided by Civ.R. 3(A). This Court should decline the Appellant's extraordinary request, which will create far more problems than it solves. The First

District Court of Appeals reasonably and correctly applied the Rules of Civil Procedure and the savings statute, R.C. 2305.19(A), to determine that Liles' refiled action was not time barred.

A. *Liles* correctly states that a plaintiff's first *voluntary* dismissal under Civ.R. 41(A)(1) is, by the plain language of the rule, a dismissal without prejudice and otherwise than upon the merits.

Distilled to its essence, the *Liles* decision below stands for a very simple proposition—under the plain language of Civ.R. 41(A)(1), when a plaintiff first *voluntarily* dismisses his claims without prejudice under that rule, the dismissal is not a failure upon the merits. This has been a basic and bedrock principle of Ohio civil procedure for more than a century: "For more than 130 years, the Supreme Court of Ohio has held that voluntary dismissals constitute failures 'otherwise than upon the merits' within the meaning of the savings statute." *Liles v. Sporing*, 2025-Ohio-626, ¶ 18 (1st Dist.).

The *Liles* court cited multiple precedents of this Court stretching back to 1893 to make this point: *Siegfried v. R.R. Co.*, 50 Ohio St. 294 (1893); *Chadwick v. Barba Lou, Inc.*, 69 Ohio St.2d 222, 226 (1982); *Frysinger v. Leech*, 32 Ohio St.3d 38 (1987); *Vitantonio, Inc. v. Baxter*, 2007-Ohio-6052; *Moore*, 2020-Ohio-4113.

The *Liles* court correctly found that there is no authority explaining when a voluntary dismissal without prejudice becomes a "failure on the merits" "by operation of law." *Liles* at ¶ 43-44. Indeed, according to the plain language of Civ.R. 41(A)(1), "Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits of any claim that the plaintiff has once dismissed in any court."

When this Court in *Moore* stated that the action in that case was subject to dismissal, it means that it was subject to dismissal *by the trial court* by operation of Civ.R. 3(A). *Gadd v.*

Estate of Lafferty, 2016-Ohio-4927, ¶ 8 (11th Dist.) ("We recognize that Civ.R. 3(A) dismissals have the potential to be either (1) without prejudice for failure to commence within the one-year period or (2) with prejudice for failure to commence within the one-year period and also within the applicable statute of limitations. The latter type of dismissal normally occurs with refiled complaints that do not fall within the savings statute or when it is clear from the record that the statute of limitations has lapsed and has not been tolled." (citing *LaBarbera v. Batsch*, 10 Ohio St.2d 106 (1967))). The *Liles* court did not dispute this concept as a correct and reasonable statement of the law; nor does amicus. As explained in *Liles*,

> True, a trial court's judgment dismissing an action based on the statute of limitations is a failure on the merits. *See Moore*, 2020-Ohio-4113, at ¶ 19; *see also Clawson v. Hts. Chiropractic Physicians, L.L.C.*, 2022-Ohio-4154, ¶ 31; *Anderson v. Borg-Warner Corp.*, 2003-Ohio-1500, ¶ 20-23 (8th Dist.) (holding that a trial court's dismissal for failure to commence an action within the applicable statute of limitations and Civ.R. 3(A) is on the merits and with prejudice). *But the trial court did not dismiss the 2020 action. Liles did.*

Liles at ¶ 44 (emphasis added). Indeed, the court acknowledged that, like in *Moore*, Liles's case remained subject to dismissal at the time he voluntarily dismissed his case. *Id*. at ¶ 34. But, "Once Liles dismissed the 2020 action, the trial court did not, and had no authority to, enter judgment against Liles because a voluntary dismissal 'completely terminates the possibility of further action on the merits of the case upon its mere filing.'" *Id*. at ¶ 36, quoting *State ex rel. Fifth Third Mtge. Co. v. Russo*, 2011-Ohio-3177, ¶ 17.

This dovetails with the general understanding of the plaintiff's right to take a voluntary dismissal at any time up to trial, and to avoid the effect of a dispositive motion. For instance, summary judgment in favor of one defendant in a multiple defendant case is nullified when a plaintiff files a voluntary dismissal of all defendants. *Fairchilds v. Miami Valley Hosp., Inc*., 2005-Ohio-1712, ¶ 37-39 (2d Dist.). "The Civ.R. 41(A)(1) right to file a notice of dismissal

applies even where a plaintiff files the notice of dismissal after learning that the court intends to journalize an adverse decision." *Conley v. Jenkins*, 77 Ohio App. 3d 511, 517 (4th Dist, 1991).

The *Liles* court's conclusion was a correct one. Appellant cannot cite a case where this Court, or any other Ohio court, has treated a plaintiff's first voluntary dismissal, without prejudice, into an adjudication on the merits "by operation of law." Appellant does not fare any better in his appeal to this Court; he merely argues

> The takeaway is that a plaintiff who has yet to commence must utilize a Civ.R. 41(A) dismissal in one of two ways before his claim becomes time-barred: voluntarily dismiss prior to the expiration of the statute of limitations or voluntarily dismiss prior to the one-year commencement period in Civ.R. 3(A). If he does either of those things, he can utilize the savings statute to refile his claim. If he fails to do both, his claims are time-barred and should be considered dismissed on the merits, regardless of any label that the dismissal is without prejudice. *This can and should be the rule of law.*

Appellant Br., 14 (emphasis added).

This Court should decline that invitation. As explained by *Liles*, "Sporing essentially asks us to look past Liles's voluntary dismissal—a dismissal the Ohio Civil Rules tells us was without prejudice—to determine that an asserted, but unadjudicated, affirmative defense converts that dismissal to one on the merits. We decline to do so." *Liles* at ¶ 46.

B. The *Liles* court correctly interpreted and distinguished *Moore* to hold that the savings statute applied, because Liles met its terms.

In *Liles*, the First District correctly interpreted this Court's decision in *Moore* and distinguished the facts. Whereas the *Liles* plaintiff explicitly complied with the savings statute by voluntarily dismissing his case under Civ.R. 41(A) and then refiling it, the *Moore* plaintiff had not utilized either provision at all. Thus, *Liles* correctly followed *Moore's* holding, which is that actual compliance is necessary for a plaintiff to benefit from the savings statute, and

distinguished it, holding that Liles had actually complied with the savings statute when he dismissed and refiled the case.

Appellant seeks to rely on *dicta* in *Moore* suggesting that a voluntary dismissal by a plaintiff becomes one on the merits if it happens outside the statute of limitations. This Court should affirm *Liles*, which follows and reinforces the actual holding in the *Moore* decision.

1. *Liles* is consistent with *Moore's* holding.

This Court succinctly resolved *Moore* and stated its holding in one sentence: "We resolve the certified-conflict question by stating that the savings statute may be applied only when its terms have been met." *Moore* at ¶ 36. This constitutes the actual holding. *Moore* dealt specifically and explicitly with a situation where the plaintiff had *not* met the terms of the savings statute, because there had not been a failure of any sort, on the merits or not, when the trial court dismissed the plaintiff's action. *Id*. at ¶ 7-9, 12. Rather, the plaintiff in *Moore* made a request to attempt service after the expiration of the Civ.R. 3(A) commencement period—a mechanism that had been treated as an implied dismissal and refiling according to *Goolsby v. Anderson Concrete Corp.*, 61 Ohio St.3d 549 (1991). However, it was undisputed that the *Moore* plaintiff did not actually utilize Civ.R. 41(A), and that there had not been an actual failure other than upon the merits when the trial court ultimately granted summary judgment for failure to commence. *Id*. at ¶ 19. Thus, the savings statute, by its plain language, could not apply, because R.C. 2305.19(A) specifically refers to either "judgment for the plaintiff [which] is reversed or if the plaintiff fails otherwise than upon the merits[.]"

Moore correctly limited the *Goolsby* practice of trial courts treating instructions for re-serving a defendant beyond the one year period for commencement as being akin to a voluntary dismissal and refiling. *Moore* explained that a plaintiff should not be able to rely on *Goolsby* and

have an implied dismissal and refiling just to extend the Civ.R. 3(A) period. *Moore* at ¶ 25-26. As this Court wrote,

> Moore's argument would essentially change Civ.R. 3(A)'s one-year commencement rule to a two-year commencement rule. We decline to adopt such a construction in the face of the explicit language of Civ.R. 3(A). The savings statute does not apply *automatically* to extend the one-year commencement requirement. It applies only when its terms are met: when an action is commenced or attempted to be commenced; when a judgment is reversed or an action fails other than on the merits, that is, when there is either a voluntary dismissal without prejudice under Civ.R. 41(A) or an involuntary dismissal without prejudice under Civ.R. 41(B); and when the complaint is refiled within one year.

Id. at ¶ 30.

The *Liles* decision is consonant with this reasoning. Liles himself did exactly what *Moore* said he needed to do to take advantage of the savings statute—voluntarily dismiss without prejudice under Civ.R. 41(A)(1), and then refile within one year of that dismissal.

This result matches the plain language of the Rules of Civil Procedure – Civ.R. 3(A) and Civ.R. 41(A)(1) – and the statute, R.C. 23015.19(A). Appellant Sporing is asking that this result be reversed for policy reasons. This Court has cautioned against issuing rulings that avoid the application of the Civil Rules in the past. *See Ackman v. Mercy Health W. Hosp., L.L.C.*, 2024-Ohio-3159, ¶ 20, quoting *Gliozzo v. Univ. Urologists of Cleveland, Inc.*, 2007-Ohio-3762, ¶ 17 ("[w]hether appellants' conduct constituted gamesmanship or good litigation strategy, they followed the rules. If such behavior should not be permitted in the future, the proper avenue for redress would be to seek to change those rules."); *see also Ackman* at fn. 4 ("That in the 17 years since our decision in *Gliozzo*, Civ.R. 12(H) has not been amended to include participation in a case as a means of waiving a defense is of no import to the dissent, which would change the rule by judicial fiat rather than by the well-established method laid out in Ohio Const., art. IV, § 5(B).").

Appellee Liles followed the rules when he took a Civ.R. 41(A) voluntary dismissal without prejudice, so that he could utilize the savings statute. Changes to the meaning of Civ.R. 41(A) should come according to the proper rulemaking method, and not by judicial limitation by this Court.

2. Appellant is relying on nonbinding *dicta* from *Moore* to urge reversal.

This Court should not reverse based on Appellant's interpretation of *Moore's dicta*. Appellant argues that *Moore* imposed a rule requiring that a voluntarily dismissal without prejudice must occur during the Civ.R. 3(A) commencement period to avoid becoming a failure upon the merits. To the extent that any statements in *Moore* implied such a rule, they are not the holding of this Court, they are *dicta*. Therefore, this Court should not overturn *Liles* as conflicting with Moore.

This Court is not bound by *dicta*[1] in its prior decisions. *McCullough v. Bennett*, 2024-Ohio-2783, ¶ 17, fn. 1, citing *State ex rel. Gordon v. Barthalow*, 150 Ohio St. 499, 505-506 (1948). *McCullough* observes that "Because *dicta* is not binding, we must examine whether a court's reasoning is valid to ensure that we get the law right. *See* Garner *et al*., *The Law of Judicial Precedent* 226 (2016) ("The precedential sway of a case is directly related to the care and reasoning reflected in the court's opinion.")."

> [1] "Obiter dictum" has been defined as "'an incidental and collateral opinion uttered by a judge, and therefore (as not material to his decision or judgment) not binding.'" [*Barthalow* at 505-506], quoting *Webster's New International Dictionary* (2d Ed.). Black's Law Dictionary defines it as "a judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential." *Black's Law Dictionary* (8th Ed.2004) 1102.
>
> *State v. Fuller*, 2010-Ohio-726, ¶ 5 (Pfeifer, J. dissenting).

The certified conflict question posed to this Court in *Moore* was,

> "Does the Ohio savings statute, R.C. 2305.19(A), apply to an action in which a plaintiff attempts, but fails to perfect service on the original complaint within one year pursuant to Civ.R. 3(A)? If so, when a plaintiff files instructions for service after the Civ.R. 3(A) one-year period, does the request act as a dismissal by operation of law and also act as the refiling of an identical cause of action so as to allow the action to continue?"
>
> []2018-Ohio-4732[].

Moore at ¶ 10.

Thus, *Liles* correctly acknowledges that

> the *Moore* Court was not presented with facts similar to those in this case, where the plaintiff voluntarily dismissed his action and then refiled it within a year. Because *Moore* did not involve a voluntary dismissal and refiling, the *Moore* court had no occasion to consider what effect the expiration of the commencement period and statute of limitations might have on a plaintiff's first voluntary dismissal. To the extent that *Moore's* statements suggest that plaintiffs may only take advantage of the savings statute if they voluntarily dismiss the action within the commencement period, that language is *dicta*.

Liles at ¶ 31, citing *McCullough* at ¶ 17, fn. 1

Because the plain language of Civ.R. 41(A) and R.C. 2305.19, as well as the weight of authority regarding voluntary dismissals without prejudice, do not support *dicta* statements in *Moore*, this Court should not reverse *Liles* on this basis.

C. This Court's reasoning in *McCullough v. Bennett* supports affirmance.

This Court's reasoning in *McCullough* further supports affirmance of *Liles*.

In *McCullough*, this Court held that the text of R.C. 2305.19(A) did not support the judicially created rule that the savings statute could only be used one time. *McCullough* at ¶ 16-19. This Court explained that the notion that the savings statute may only be used once to refile a complaint was contrary to the plain language of R.C. 2305.19(A), which contains no such

limitation. *Id.* at ¶ 14, 19. This Court further explained that the "one-use" rule stemmed from lower courts applying a *dicta* statement in *Thomas v. Freeman*, 79 Ohio St.3d 221 (1997) that the savings statute can be used only once to refile a case. *Id.* at ¶ 17-18. This Court stated:

> We have never cited the *Thomas* dicta suggesting that there is an unwritten one-use restriction to the saving statute. The *Thomas* dicta has, however, been invoked frequently by lower courts. *See, e.g., Linthicum v. Physicians Anesthesia Serv., Inc.*, 2019-Ohio-3940, ¶ 9 (1st Dist.); *Paul v. I-Force, L.L.C.*, 2017-Ohio-5496, ¶ 36 (2d Dist.); *Wolfe v. Priano*, 2009-Ohio-2208, ¶ 27 (5th Dist.).
>
> The question for today is whether we adopt the *Thomas* dicta and apply it to the present case. We decline to do so.

Id. at ¶ 18-19.

Just as this Court declined in *McCullough* to follow previous *dicta* and create judge-made rules limiting the application of the savings statue by adding requirements not present in the statute, this Court should decline the Appellant's invitation to do so in this case.

D. Voluntary dismissals under Civ.R. 41(A)(1)(a) occur without court action. Appellant's preferred rule will require trial courts to analyze nearly all dismissed and refiled cases to determine if service was perfected in the prior case.

The rule advocated by Appellant will require trial courts to review service issues in nearly all refiled cases where (1) the plaintiff voluntarily dismissed the first action and (2) the savings statute is utilized. Because voluntary dismissals by plaintiffs are typically achieved by notice and without any court involvement, courts will be burdened with litigating the circumstances of such dismissals in subsequent cases in most instances. This will promote the opposite of judicial economy and convenience to litigants—instead, parties will be incentivized to raise purported service issues from prior cases (which may not have even been filed in the same court) as threshold challenges to the refiled cases.

"A notice of voluntary dismissal is self-executing and requires no further action by the trial court." *Klosterman v. Turnkey-Ohio,* 2010-Ohio-3620, ¶ 9 (10th Dist.), citing *Williams v. Thamann,* 2007-Ohio-4320, ¶ 5 (1st Dist).

Liles is distinguishable from *Moore* in a major way. In *Liles*, the plaintiff dismissed the original action by notice under Civ.R. 41(A)(1)(a) while a motion to dismiss was pending. *Liles* at ¶ 5. In *Moore*, the defendant moved for summary judgment in original, and only, action on the basis that the case was barred by the statute of limitations due to the failure to commence because of lack of proper service within one year as required by Civ.R. 3(A). *Moore* at ¶ 7-8. Thus, in *Liles*, the trial court never adjudicated the failure of service/failure to commence issue, whereas in *Moore*, the trial court did so. *Liles* at ¶ 46 ("Sporing essentially asks us to look past Liles's voluntary dismissal—a dismissal the Ohio Civil Rules tells us was without prejudice—to determine that an asserted, but unadjudicated, affirmative defense converts that dismissal to one on the merits. We decline to do so.")

Currently, a trial court may presume that, when a plaintiff refiles a case that was dismissed upon his or her own voluntary dismissal under Civ.R. 41(A)(1), the refiling is timely if (1) the plaintiff filed his or her original action before the expiration of the statute of limitations, (2) service was attempted, and (3) the refiling occurred in accordance with R.C. 2305.19(A) (that is, either within the original statute of limitations, or within a year of the voluntary dismissal, whichever occurs later). The defendant bears the burden of challenging these elements as an affirmative defense. However, should this Court overturn *Liles*, the burden now shifts to plaintiffs to affirmatively prove:

(1) that the plaintiff filed his or her case within the original statute of limitations;

(2) that the plaintiff accomplished proper service on the defendant within a year of filing **OR** that the plaintiff voluntarily dismissed his or her lawsuit before that year expired;

(3) that the refiling is timely under R.C. 2305.19(A).

That is because plaintiffs bear the burden of establishing service. This will result in two unwanted and inadvisable consequences.

First, in such cases, the affirmative defense of the statute of limitations is effectively converted into a matter that must be affirmatively pled and established by the plaintiff. *C.f. Mills v. Whitehouse Trucking Co.*, 40 Ohio St.2d 55, 60 (1974) ("To hold otherwise would effectively place the burden of affirmatively pleading compliance with the statute of limitations upon the plaintiff, contrary to the express mandate of Civ.R. 8(C)[.]"). This is because it will generally not be apparent from the pleadings whether the plaintiff achieved actual service on the defendant during the commencement period of the prior suit.

Second, relatedly, defendants will be incentivized to litigate the issue of service in the prior, dismissed case, which may have been filed in another court entirely. A good example of the morass that can occur as a result is *Kuczirka v. Ellis*, where the case went from the Summit County Court of Common Pleas to the Ninth District Court of Appeals, and back and forth, because the trial court needed to analyze whether a plaintiff's service was sufficient, and then had to again analyze whether the plaintiff's attempt at service was sufficient to constitute an attempt to commence litigation. *See Kuczirka v. Ellis*, 2018-Ohio-728 (9th Dist.) (reversing and remanding trial court's dismissal for failure to commence where trial court improperly considered matters outside the pleadings to determine propriety of service by commercial carrier on a 12(B) motion to dismiss) and 2018-Ohio-5318 (9th Dist.) (remanding matter again because

trial court failed to consider whether plaintiff's earlier attempt at service by commercial carrier constituted an attempt to commence as provided for in R.C. 2305.19(A)).

Affirming *Liles* maintains the rule that is both predictable and workable for courts and litigants alike, and limits incentives for parties to litigate over service issues that arose in now-dismissed cases.

E. The *Liles* holding does not revive stale claims, because the plaintiff *must* sue within the original statute of limitations to benefit from the savings statute.

Contrary to Appellant's arguments, the *Liles* decision does nothing to revive stale claims. R.C. 2305.19(A) only applies to extend a plaintiff's statute of limitations if the plaintiff has timely commenced, or attempted to commence, the cause of action. *Sorrell v. Estate of Datko*, 147 Ohio App.3d 319, 323 (7th Dist. 2001). "[A]n action is attempted to be commenced, as contemplated by R.C. 2305.19, when a party files a complaint with the clerk of the court within the applicable statute of limitations and demands service on that complaint." *Id*. Clearly then, a plaintiff does not have a stale claim if he has brought the claim within the initial statute of limitations. This is the only circumstance in which the *Liles* decision would apply, as the *Liles* holding presupposes that the plaintiff who took a voluntary dismissal can otherwise avail himself or herself of R.C. 2305.19(A).

Ohio courts hold that, for a plaintiff's attempt to commence to qualify under the savings statute, the plaintiff must "diligently" attempt service. *Sorrell* at 324; *see also Motorists Mut. Ins. Co. v. Huron Rd. Hosp.*, 73 Ohio St.3d 391, 396 (1995) ("Service is too vital a part of commencement of a lawsuit for a party to be deemed to have attempted commencement without even attempting service."). Therefore, it is not the dilatory plaintiff who is protected by the *Liles* holding.

This interpretation of the phrase "attempt to commence" as used in R.C. 2305.19(A) protects the defendant and the due process requirement that he or she receive notice of a claim against them. If a plaintiff takes a voluntary dismissal without prejudice after the expiration of the Civ.R. 3(A) period for commencing the action, the plaintiff would still have to establish the diligence of his or her attempts to serve the defendant in order to have the benefit of the savings statute in the subsequently refiled case. Further, Civ.R. 4(E) – requiring service within six months of filing, or a showing of good cause to extend this period – protects the defendant by permitting the court to *sua sponte* dismiss a complaint not meeting this deadline. The more likely scenario in which *Liles* will apply in future cases is when a defendant has actual notice of a lawsuit, but has not yet been served with sufficient process under Civ.R. 4, as was the case in *Liles*. Litigants retain the option of asking the trial court to determine, in a preliminary hearing, the defenses of insufficient process or insufficient service of process. *See* Civ.R. 12(D).

Thus, *Liles* does no more to revive stale claims than any other application of the savings statute. It is axiomatic that a plaintiff can voluntarily dismiss a case after years of litigation, so long as trial has not begun, and then wait one year to refile the case (unless there has been the expiration of a statute of repose). This Court should not elevate the "failure to commence" defense into a superdefense more powerful than other defenses provided by Civ.R. 12(B) or otherwise.

CONCLUSION

The plain language of Civ.R 41(A) and R.C. 2305.19(A), the weight of 130 years of authority holding that voluntary dismissals without prejudice are failures other than upon the merits, and judicial economy all support affirmance of the First District Court of Appeals' well-

reasoned decision in *Liles*. Amicus curiae respectfully urges this Honorable Court to affirm the First District's decision in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Amicus Curiæ, The Ohio Association for Justice in Support of Appellee, Jeffrey Liles was served by electronic mail pursuant to Civ.R. 5(B)(2)(f) on this 9th day of October, 2025, to the following:

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