The Supreme Court of Ohio

CASE ANNOUNCEMENTS

August 17, 2022

[Cite as *08/17/2022 Case Announcements #2*, 2022-Ohio-2791.]

APPEALS NOT ACCEPTED FOR REVIEW

2022-0594. Williams v. Kisling, Nestico, & Redick, L.L.C.
Summit App. Nos. 29630 and 29636, **2022-Ohio-1044**.
Brunner, J., dissents, with an opinion.

BRUNNER, J., dissenting.

{¶ 1} I respectfully dissent from the denial of jurisdiction in this case. The propositions of law raised by appellants, Kisling, Nestico & Redick, L.L.C., Robert Nestico, and Alberto Redick ("collectively, KNR"), present the following important issues warranting review by this court:

> The rigorous analysis required by Civ.R. 23 necessitates consideration of the essential elements of the underlying claims and defenses raised by the parties, as well as the evidentiary proof necessary and available for each in determining predominance.
>
> The predominance requirement of Civ.R. 23 cannot be satisfied where the purported class necessarily includes individuals who did not sustain an injury in fact.

{¶ 2} This case was initiated in the Summit County Court of Common Pleas on September 16, 2016, with a Sixth Amended Complaint having been filed in July 2019. The trial court's docket shows that significant amounts of time, money, and effort have been devoted to

litigating class-certification issues against a law firm. There is not much caselaw on this topic. *See, e.g., Hansen v. Landaker*, 10th Dist. Franklin Nos. 99AP-1077, 99AP-1128, 99AP-1129, 2000 WL 1803932 (Dec. 7, 2000) (finding it unnecessary to address the argument that the trial court erred by finding that a class action for legal malpractice could be litigated).

{¶ 3} In this case, in December 2019, the trial court certified two classes: Class A, which includes KNR's current and former clients who had had certain fees charged by KNR from 2010 to the present, and Class C, which includes KNR's current and former clients who had had certain fees charged by KNR from 2008 to the present. *Williams v. Kisling, Nestico & Redick, L.L.C.*, Summit C.P. No. CV-2016-09-3928, *5-13 (Dec. 17, 2019), *aff'd in part, rev'd in part, and remanded*, 9th Dist. Summit Nos. 29630 and 29636, 2022-Ohio-1044. Progress in the case then essentially halted due to litigation in the Ninth District involving those class certifications. Currently, this case is on the trial court's inactive docket until this appeal is resolved.

{¶ 4} This court's denial of jurisdiction allows proceedings in the trial court to resume. Notably, however, other gateway issues remain to be adjudicated. The issue as to whether the plaintiffs' claims are barred by the one-year statute of limitations for legal-malpractice claims still remains:

> Claims arising out of an attorney's representation, regardless of their phrasing or framing, constitute legal malpractice claims that are subject to the one-year statute of limitations set forth in R.C. 2305.11(A). * * * When the gist of a complaint sounds in malpractice, other duplicative claims are subsumed within the legal malpractice claim. * * * Indeed, "[m]alpractice by any other name still constitutes malpractice."

(Brackets added in *Illinois Natl. Ins. Co.*) *Illinois Natl. Ins. Co. v. Wiles, Boyle, Burkholder & Bringardner Co., L.P.A.*, 10th Dist. Franklin No. 10AP-290, 2010-Ohio-5872, ¶ 15, quoting *Muir v. Hadler Real Estate Mgt. Co.*, 4 Ohio App.3d 89, 90, 446 N.E.2d 820 (10th Dist.1982). KNR has raised the statute-of-limitations defense in its answers. If the claims against KNR are found to be barred by R.C. 2305.11, it is unfortunate and unacceptable that the parties have been required to spend significant amounts of time and expense litigating certification issues. Although a trial court is free to manage its own docket, it should seek to ensure that the

proceedings before it do not result in unnecessary waste or costs. The statute-of-limitations issue should be resolved to avoid further delay and expense for the parties and the courts.

{¶ 5} For these reasons, I respectfully dissent.