

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JAMES ALBERS,	:	APPEAL NO. C-250017
		TRIAL NO. A-1903421
FRIEDA AARON,	:	
PATRICIA ADAMS,	:	<i>JUDGMENT ENTRY</i>
MICHELLE AGEE,	:	
LAURA AKER,	:	
KATRINA ALLEN,	:	
SHERRI ALLEN,	:	
REBECCA APPLEGATE,	:	
BRAD ARNOLD,	:	
GEORGE ARNOLD,	:	
DIANA ASHCRAFT,	:	
BRIAN ATKINS,	:	
JONATHAN ATWELL,	:	
THOMAS ATKINSON,	:	
CHRISTOPHER ATWOOD,	:	
AMANDA AYRES,	:	
GAYLE BACHMANN,	:	
CAIDAN BAILEY,	:	
NICOLE BAKER,	:	
PAUL BAKER,	:	
JENNIFER BALLINGER,	:	

OHIO FIRST DISTRICT COURT OF APPEALS

THOMAS BARTH, :
CINDY BARTLETT, :
LAURA BATSCHE, :
NICHOLAS BATTISTA, :
JODY BAUER, :
JOSEPH BAUMGARDNER, :
STEVEN BAYLISS,
Executor of the Estate of Louis Bayliss, :
deceased,
MICHELLE BEAVAN, :
PHYLLIS BECHTOLD, :
JUDY BECK, :
TROY BECKELHEIMER, :
NANCY BEGLEY, :
CATHY BEIL, :
TERRY BEIL, :
MACKENZIE BENDER, :
DENISE BENGE, :
NICK BENGE, :
ANTOINETTE BENJAMIN, :
SHAWNDA BENTON, :
WILLIAM BENTON, :
DENISE BESS, :
LEONA BEYER, :
TREY BILLING, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

EDYTHE BISHOP,	:
JOEL BLAIR,	:
ANTHONY BODE,	:
BARBARA BOGGS, deceased, by and through PAUL BOGGS,	:
KAITLYN BOGGS,	:
STEPHANIE HAWKS, as Executrix of the Estate of Nancy Boland,	:
JENNIFER BOOKMAN,	:
PATRICIA BOONE,	:
DEENA BORCHERS,	:
DORIS BOTNER,	:
GERALD BOTNER,	:
ARLETTA BOWLING,	:
NANCY BOWMAN,	:
PENNY BRACKETT,	:
LATOYA BRADSHAW,	:
REBEKAH BRADY,	:
CHRISTINA BRASHEAR,	:
MELISSA BRAUCHER,	:
DOMINIQUE BRAY,	:
LINDSEY BRAY,	:
RANDY BREWER,	:
SHARON BRICE,	:
MELVIN JAMES,	:

OHIO FIRST DISTRICT COURT OF APPEALS

Executor of the Estate of Carrie Britten, deceased,	:
MICHAEL BROPHY,	:
RICHARD BROREIN, Executor of the Estate of Eileen Brorein,	:
CALVIN BROWN,	:
DAWN LEE ANN BROWN,	:
MALIKA BONNER, Administrator of the Estate of James Brown,	:
TARA BROWN,	:
RICHARD LOZIER, Executor of the Estate of Patricia Bruce,	:
JONATHAN BRUNNER,	:
ANGELA BUECHEL,	:
VICKI BUSCHUR,	:
KATHLEEN BUSHELMAN,	:
JACK BUSKIRK, Administrator of the Estate of Annette Buskirk Bren Butler,	:
MICHELLE BYAR,	:
DOUG CALLAHAN,	:
JANET CAMPBELL,	:
ROBERT CAMPBELL,	:
ASHLEY CASEY,	:
RENECIA CHERRY,	:
BUNNAVUTH CHHUN,	:
TONYA CHISMAN,	:

OHIO FIRST DISTRICT COURT OF APPEALS

CHRIS CLARK, :
TERRY COLLINS, :
ELIZABETH COMPO, :
DAVID CONGER, :
KENNETH CONGER, :
BRENDA CONLEY, :
DANA CONLEY, :
LISA CONLEY, :
FRANCENE COOK, :
MICHAEL COOK, :
GARY L. COOTS, :
JANET CORNETT, :
JACOB COTTER, :
BARBARA COUCH, :
SANDRA COUCH,
Administratrix of the Estate of Jackie
Couch, :
ERIC COURTNEY, :
MICHAEL CRAIL, :
KAREN CRISSINGER, :
JOI CROWE, :
KALI CROWE, :
AMBER CROXSON, :
JOY CULLINS, :
WILLIAM DABNEY, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

TAMMY DALE, :
JOSEPH DAVIS, :
NELLIE DAVIS, :
RALPH DAWSON, :
OLLIE DEATON, :
STEFANIE DEATON, :
JODI BEHRENDT,
Executor of the Estate of Holly Decair, :
DAMON DECK, :
SANDRA DENNIS, :
ROBERT DENSLER, :
KRISTINE DORITY, :
CAROLYN DOTSON, :
DEBORAH DOYLE, :
DOUGLAS DRAFTS, :
PATRICK DUGAN, :
BILLY DUGGER, :
DAWN DUNKLIN, :
DEJA DUNLAP, :
DARRELL EARLS, :
CHRIS EBBING, :
MONA EDER, :
DANA EDWARDS, :
KELVIN ELFERS, :
HENRY CURRY,
as Executor of the Estate of Connie

OHIO FIRST DISTRICT COURT OF APPEALS

McClure-Ellington,	:
HENRY CURRY, as Executor of the Estate of Robert Ellington,	:
RICHARD ELLIOT,	:
KELLY ENGLE,	:
BRENDA ERRGANG,	:
TRACY ESSELMAN,	:
MARJORIE EVERSOLE,	:
ARLENE FAIT,	:
KIMBERLY BATES, as Administratrix of the Estate of Tony Falkner,	:
LINDA FAVARON, Executor of the Estate of Neil Favaron, deceased,	:
JACOB FELTNER,	:
KAREN FELTNER,	:
CAELA FINNELL,	:
JOSH FOGEL,	:
FRANCINE FORD,	:
LENNIE FOSSETT,	:
AMANDA FRANKS,	:
JOANN FRAZIER,	:
JULIE FREEMAN,	:
AMY FULLER,	:
MARK FUNK, JR.,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

JUDITH GARDNER, :
CHRISTINE GOLDSTEIN, :
DONNA GOOD, :
GREG GRABER, :
MAURICE GRABOW, :
ERIN GREELISH, :
TODD GREEN, :
GLORIA GREENE, :
ROBBIE GREGORY, :
CARLA GRIESSMAN, :
SUSAN GRIFFIN, :
JENNY GRIMM, :
MELISSA HABERMEHL, :
LENORA HAGGARD, :
LYNN HALEY, :
ALYSSA HALL, :
DAVID HALL,
Administrator of the Estate of Lisa Hall, :
RUHAMA HALL, :
DESIREE PEYTON,
Individually, and as Administrator of
the Estate of Jade Hamby, :
DOROTHEA HAMILTON, :
SAMANTHA HAMILTON, :
COURTNEY HAMMONS, :
GERALD HAMMONS, :

OHIO FIRST DISTRICT COURT OF APPEALS

TIMOTHY HANNON, :
BRIANA HARRIS, :
ADAM HARTMAN, :
KEVIN HARTNESS, :
JESSICA HASTINGS, :
WAYNE HATFIELD, :
SARA HAUENSTEIN, :
DOUGLAS HAYES, :
DOUGLAS HAYES,
Administrator of the Estate of William
Hayes, :
MINUET HEALY, :
LESLIE POWERS,
Administrator of the Estate of Heather
Hefner, deceased, :
DENISE HELTON, :
EVELYN HELTON, :
THERESA HELTON, :
DEBRA HENDERSON, :
KELLY HENNESSY, :
BARBARA HENSLEY, :
RYAN HENSLEY, :
JENNIFER HICKEY, :
ALISSA HIGHTCHEW MESSER, :
KAREN HIGGINBOTHAN, :
MICHAEL HILLARD, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

DIRK HITCHCOCK, :
CELESTE HOFFMAN, :
LORETTA HON, :
CHELSEA HORTMAN, :
ROBERT HOUGHTON, SR., :
ROBERT HOUGHTON, JR., :
RICKY HOUNCHELL, :
RITA HOUNCHELL, :
KATHRYN HOWELL, :
MARY GERBUS,
Administratrix of the Estate of Lois
Hughes, :
TAMMY HUGHES, :
CAROLYN HURSONG, :
DAVID HUSER,
as Executor of the Estate of Connie
Huser, deceased, :
GEORGE HUTCHINSON, :
MARTHA HUTTON, :
IRENE HYDE, :
JEFFREY HYDE, :
ELSA IERACI, :
ALYSSA JACKSON, :
DAMIAN JACKSON, :
TRACY JANSON, :
KIMBERLY JENKINS, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

STEPHANIE JOBE, :
AMBER JOHNSON, :
CHELSEA JOHNSON, :
KAREN JOHNSON, :
ROGER JOHNSON, :
SARA JONAS, :
KELLY JONES, :
Administratrix of the Estate of Dillon
Jones, :
JOAN JONES, :
RACHEL JONES, :
TAMMY JONES, :
JACQUELINE JUDKINS, :
JACQUELINE JUDKINS, :
as Administratrix of the Estate of Phyllis
Judkins, :
CHRISTOPHER MCCAUGHEY, :
as Administrator of the Estate of Sarah
Juergen, :
CATHY HOLLEY, :
Administratrix of the Estate of Linda
Kallmeyer-Ward, :
JOSH KAUFFMAN, :
KATELYN KAUFFMAN HOUSTON, :
THOMAS KELLISON, :
MICHELLE KEPLINGER, :
MARTHA KIBLER, :
DEBORAH KIDD, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

SHERRY KIDD, :
VIVIAN KIEFER, :
CHARLOTTE KING, :
MAGGIE KNAUER, :
as Executor of the Estate of Christopher :
Knauer, deceased, :
AMANDA KOCH, :
ROSE KOEHLER, :
SHANNON KOEHLER, :
MIKE KOELBLIN, :
VALARIE KOPP, :
LAURA KRANBUHL-MCKEE, :
LARRY KRECH, :
BRANDON LACINAK, :
NATASHA LAINHART, :
VICTORIA LANDRUM, :
SARA LANE, :
NICHOLAS LANGFORD, :
TOM LANTRY, :
KAREN LEGER, :
BETH LEISRING, :
SANDRA LEMMEL, :
KATIE LEHMKUHL, :
AILENE LEVAN, :
HILARY LEVANDOFSKY, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

ADRIAN LILLY, :
DEREK LIST, :
LYNNE LIST, :
TAMMIE LITTLE, :
TAMALA LOVETTE, :
RHONDA MAINS, :
SHIRLEY MAINS, :
VICKY MAINS, :
TAMMY MANN, :
KENNETH MAHLENKAMP, :
JACK MARCHESCHI, :
SHARON HOWARD, :
as Administrator of the Estate of Paul
Marksberry, :
TIMOTHY MARSHALL, :
JULIE MARTIN, :
KELLY MARTIN, :
on behalf of her minor daughter Macy
Acord, :
MARSHA MARTIN, :
STACY JOHN MARTIN, :
ROBERT MASTERS, :
TRACI MATTHEWS, :
BRANDON MATHIS, :
KIMBERLY MAYER, :
DEREK MAYFIELD, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

JAMES MCCAIN, :
JENNA MCCALL, :
HEATHER MCCANN, :
HIRAM MCCAULEY, :
KYRA MCCLENDON, :
STACY FLETCHER, :
as Executrix of the Estate of Jeffrey :
McClure, :
KEVIN MCDONALD, :
MARCELLA MCDONALD, :
CANDI MCKINNEY, :
TERESA MCMILLEN, :
MARK MCMURREN, :
KAMERON MCNEAL, :
KERRY MCNEAL, :
TONIA MCQUEARY, :
TIFFANY MEADOWS, :
DAWN MERLAND, :
TIFFANY MESSERSCHMIDT, :
RANDALL METCALF, :
DIANE MEYER, :
TOM MEYERS, :
LYNDSEY MIDDENDORF, :
KAREN MILLER, :
RYAN MILLER, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

SAMANTHA MINK,	:
VERA MOFFITT,	:
JUNIOR MONROE,	:
BILLIE JEAN MOORE,	:
DEBBIE MOORE,	:
DONALD MOORE,	:
ROBERT MOORE,	:
STEPHANIE MOORE,	:
TIM MOORE,	:
WILLIAM MOORE,	:
JILL MORTHLAND,	:
ROBERT MOUNCE,	:
REBA MORGAN,	:
SARRA MUELLER,	:
JENNIFER MYERS,	:
JOETTA NAFE,	:
TONYA NEAL,	:
GARY NEU,	:
MARJORIE NEWMAN,	:
TERESA NICHOLS,	:
MICHELLE NOBLE,	:
GAIL NORDEMAN,	:
RUVIMBO NYEMBA,	:
WENDY OBERLANDER,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

TIMOTHY OSBORN, :
DANNIE OWENS, :
HALEY PAYNE, :
JEFF PEDDICORD, :
DUANE PELFREY, :
NANCY PFETSCH,
as Executrix of the Estate of Kenneth
Pfetsch, :
CLARENCE PHILLIPS, :
HEATHER PICKETT, :
JEFFREY POFF, :
SHEILA POGUE-KRABACHER, :
JEFF POTTS, :
ANTOINE POWELL, :
BRYAN POWERS, :
KATHERINE PRATER, :
HEATHER SCHUSTER,
as Executrix of the Estate of Lawrence
Pridemore, :
TOM PRITCHARD,
as Executor of the Estate of Sharon
Pritchard, deceased, :
SHERRI PUCKETT-MORRISSTTE, :
CAROL PUMMELL, :
MISTY EMERSON,
as Administrator of the Estate of Marcia :
Quinn, deceased, :
SANDRA RADEKE, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

MARY RAVENSCRAFT, :
TODD RAY, :
SAMANTHA REDROW, :
DANIELLE REED, :
MARK REED, :
JEAN FENNER, :
Executor of the Estate of Jane Reeder, :
VALERIE REEVES, :
CIERRA BARR, :
Administrator of the Estate of Holly :
Reifenberger, :
JEFF REMLEY, :
DERRILL REYNOLDS, :
HARRY REYNOLDS, :
KENT REYNOLDS, :
LISA REYNOLDS, :
JOHN RICHARDSON, :
JORDAN RIBARIU, :
JASON RILEY, :
GORDON RISTER, :
as Administrator of the Estate of Donna :
Rister, :
DEBORAH ROARK, :
KELLY ROBINSON, :
THERESA ROBBINSON-WOODS, :
DEBBIE RODRIQUEZ, :
JASON ROMER, :

OHIO FIRST DISTRICT COURT OF APPEALS

DOROTHY ROSE, :
DEBORARY WORLEY, :
as Executrix of the Estate of Fay
Rosebery, :
SANDRA ROUNDTREE, :
RONALD ROWLEY, :
JOSH ROY, :
STEPHEN CARMEN, :
as Administrator of the Estate of
Kathrynn Rueve, :
ROBERT RUNTZ, :
CHRISTINA AND JOE RUTTER, :
Individually, and on behalf of their
minor son, Caron Rutter, :
MIKE SAND, :
MICHAEL SANDER, :
CHRIS SCHEPER, :
ROBIN SCHILLER, :
JOSEPH SCHIMMEL, :
KIM SCHMIDT, :
KEVIN SCHMIT, :
PATRICK SCHMIT, :
BRANDON SCHOBORG, :
SUSAN SCHOCK, :
PAUL SCHOLZ, :
TIMOTHY SCHULZE, :
RONALD SCHUSTER, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

DELORES SCOTT, :
RHONDA SCOTT, :
ALI SCULLY, :
SARA SELM, :
DANA SETTERS, :
GLENNNA SHAFER, :
ASIA SHANNON, :
BRENDA SHELL, :
DAVIS SHEMPERT, :
CHARLANN SHEPHERD, :
PATRICIA SHOTT, :
Individually, and as the Executrix of the
Estate of Gregory S. Shot, :
SHANDON SIMMONS, :
KAREN SISSON, :
MICHELLE SIZEMORE, :
HALEY WARREN, :
as Administrator of the Estate of Crystal
Slone, :
DAVID SMITH, :
DONALD SMITH, :
STACI SMITH, :
ORRIS SMOOTE, :
DAVID SNIDER, :
SHERRY SPANGENBERG, :
CRYSTAL GARRISON, :
Administrator of the Estate of Billy :
:

OHIO FIRST DISTRICT COURT OF APPEALS

Spivy, :
ZACHARY STACY, :
EDDIE STALLINGS, :
RICHARD STANFIELD, :
DAVID FISHER,
as Administrator of the Estate of :
Michelle Stephens, :
PATRICK STEPHENSON, :
TEMPIE STEPHENSON, :
DARLENE STERLING, :
BERT STIDHAM, :
SIERRA STRATMAN, :
DEBORAH STURDIVANT, :
RYAN TANNER, :
KAREN TAYLOR, :
KATHLEEN TESLCHER, :
BEN THAELER, :
BRITTANY THEILMAN, :
BRIAN THIEN, :
EDWARD THIESSEN, :
ADRIENNE THOMAS, :
CLARA TUBBS-HILLS, :
CONNIE UNDERWOOD, :
MICHAEL COLLINS,
Administrator of the Estate of Kimberly :
Underwood, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

JACKLEN UPCHURCH,	:
JORDAN VANCE,	:
ASHLEY WALKER,	:
SHANNON WALLACE,	:
VICKI WALLACE,	:
KATHERINE WALLS,	:
LINSDAY WALSH,	:
TRACEY WALSH,	:
MICHELLE WALTERS,	:
HELEN WARD,	:
MICHAEL WATKINS,	:
ELAINE WAXLER,	:
CATHLEEN WEBER,	:
DANIEL WEBBER,	:
LAURA WEISBECKER,	:
KIRSTIN WEISMAN,	:
CHRISTINA CANFIELD, Administratrix of the Estate of Regina Wesley,	:
TIMOTHY WHALEN,	:
VIOLET WHALEN,	:
LONNIE WHEELER,	:
SOPHIA WHITE,	:
JOSEPH WILDER, as Administrator of the Estate of Tamathy Wilder,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

TROY WILDER, :
BENJAMIN WILLIAMS, :
KELLY WILLIAMS, :
PATRICK WILLOUGHBY, :
CAROL WILSON, :
NODRA WEST,
Administratrix of the Estate of Jetton :
Wilson, :
JOSEPH WILSON, :
PAUL WILSON, :
PAULA WILSON, :
ROBERT WILSON, :
TERRY WILSON, :
VICKY WILSON, :
DAWN WINGERT, :
PRISCILLA WITTMAYER, :
WILLIAM WOLDER, :
JARED WOLFE, :
AMBER WORK, :
DEBORAH WORLEY, :
TERESA WORLEY, :
CARLA WOOTEN, :
RON WRIGHT,
as Executor of the Estate of Leah :
Wright, :
CHERYL WYATT, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

EMANUEL WYATT,	:
VERONICA YEAKLE,	:
JOANN YOUNG,	:
JUDY YOUNG,	:
KEITH YOUNG,	:
CORRINE ZACHARY,	:
MARY ZUREICK,	:
and	:
HANNAH ZYMSLO,	:
Plaintiffs-Appellants,	:
vs.	:
MICHAEL LYON,	:
JAMES BROCKMAN,	:
PAUL VOLLMAN,	:
LINDHORST & DREIDAME CO.,	:
L.P.A.,	:
STEVE JANIK,	:
and	:
JANIK L.L.P.,	:
Defendants-Appellees.	:

This cause was heard upon the appeal, the record, and the briefs.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

OHIO FIRST DISTRICT COURT OF APPEALS

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 1/23/2026 per order of the court.

By: _____
Administrative Judge

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

JAMES ALBERS,	:	APPEAL NO. C-250017
		TRIAL NO. A-1903421
FRIEDA AARON,	:	
PATRICIA ADAMS,	:	
MICHELLE AGEE,	:	<i>OPINION</i>
LAURA AKER,	:	
KATRINA ALLEN,	:	
SHERRI ALLEN,	:	
REBECCA APPLEGATE,	:	
BRAD ARNOLD,	:	
GEORGE ARNOLD,	:	
DIANA ASHCRAFT,	:	
BRIAN ATKINS,	:	
JONATHAN ATWELL,	:	
THOMAS ATKINSON,	:	
CHRISTOPHER ATWOOD,	:	
AMANDA AYRES,	:	
GAYLE BACHMANN,	:	
CAIDAN BAILEY,	:	
NICOLE BAKER,	:	
PAUL BAKER,	:	

OHIO FIRST DISTRICT COURT OF APPEALS

JENNIFER BALLINGER, :
THOMAS BARTH, :
CINDY BARTLETT, :
LAURA BATSCHE, :
NICHOLAS BATTISTA, :
JODY BAUER, :
JOSEPH BAUMGARDNER, :
STEVEN BAYLISS,
Executor of the Estate of Louis Bayliss, :
deceased,
MICHELLE BEAVAN, :
PHYLLIS BECHTOLD, :
JUDY BECK, :
TROY BECKELHEIMER, :
NANCY BEGLEY, :
CATHY BEIL, :
TERRY BEIL, :
MACKENZIE BENDER, :
DENISE BENGE, :
NICK BENGE, :
ANTOINETTE BENJAMIN, :
SHAWNDA BENTON, :
WILLIAM BENTON, :
DENISE BESS, :
LEONA BEYER, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

TREY BILLING,	:
EDYTHE BISHOP,	:
JOEL BLAIR,	:
ANTHONY BODE,	:
BARBARA BOGGS, deceased, by and through PAUL BOGGS,	:
KAITLYN BOGGS,	:
STEPHANIE HAWKS, as Executrix of the Estate of Nancy Boland,	:
JENNIFER BOOKMAN,	:
PATRICIA BOONE,	:
DEENA BORCHERS,	:
DORIS BOTNER,	:
GERALD BOTNER,	:
ARLETTA BOWLING,	:
NANCY BOWMAN,	:
PENNY BRACKETT,	:
LATOYA BRADSHAW,	:
REBEKAH BRADY,	:
CHRISTINA BRASHEAR,	:
MELISSA BRAUCHER,	:
DOMINIQUE BRAY,	:
LINDSEY BRAY,	:
RANDY BREWER,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

SHARON BRICE, :
MELVIN JAMES,
Executor of the Estate of Carrie Britten, :
deceased,
MICHAEL BROPHY, :
RICHARD BROREIN,
Executor of the Estate of Eileen Brorein, :
CALVIN BROWN, :
DAWN LEE ANN BROWN, :
MALIKA BONNER, :
Administrator of the Estate of James
Brown, :
TARA BROWN, :
RICHARD LOZIER, :
Executor of the Estate of Patricia Bruce,
JONATHAN BRUNNER, :
ANGELA BUECHEL, :
VICKI BUSCHUR, :
KATHLEEN BUSHELMAN, :
JACK BUSKIRK,
Administrator of the Estate of Annette
Buskirk Bren Butler, :
MICHELLE BYAR, :
DOUG CALLAHAN, :
JANET CAMPBELL, :
ROBERT CAMPBELL, :
ASHLEY CASEY, :
RENECIA CHERRY, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

BUNNAVUTH CHHUN, :
TONYA CHISMAN, :
CHRIS CLARK, :
TERRY COLLINS, :
ELIZABETH COMPO, :
DAVID CONGER, :
KENNETH CONGER, :
BRENDA CONLEY, :
DANA CONLEY, :
LISA CONLEY, :
FRANCENE COOK, :
MICHAEL COOK, :
GARY L. COOTS, :
JANET CORNETT, :
JACOB COTTER, :
BARBARA COUCH, :
SANDRA COUCH, :
Administratrix of the Estate of Jackie
Couch, :
ERIC COURTNEY, :
MICHAEL CRAIL, :
KAREN CRISSINGER, :
JOI CROWE, :
KALI CROWE, :
AMBER CROXSON, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

JOY CULLINS, :
WILLIAM DABNEY, :
TAMMY DALE, :
JOSEPH DAVIS, :
NELLIE DAVIS, :
RALPH DAWSON, :
OLLIE DEATON, :
STEFANIE DEATON, :
JODI BEHRENDT,
Executor of the Estate of Holly Decair, :
DAMON DECK, :
SANDRA DENNIS, :
ROBERT DENSLER, :
KRISTINE DORITY, :
CAROLYN DOTSON, :
DEBORAH DOYLE, :
DOUGLAS DRAFTS, :
PATRICK DUGAN, :
BILLY DUGGER, :
DAWN DUNKLIN, :
DEJA DUNLAP, :
DARRELL EARLS, :
CHRIS EBBING, :
MONA EDER, :
DANA EDWARDS, :

OHIO FIRST DISTRICT COURT OF APPEALS

KELVIN ELFERS,	:
HENRY CURRY, as Executor of the Estate of Connie McClure-Ellington,	:
HENRY CURRY, as Executor of the Estate of Robert Ellington,	:
RICHARD ELLIOT,	:
KELLY ENGLE,	:
BRENDA ERRGANG,	:
TRACY ESSELMAN,	:
MARJORIE EVERSOLE,	:
ARLENE FAIT,	:
KIMBERLY BATES, as Administratrix of the Estate of Tony Falkner,	:
LINDA FAVARON, Executor of the Estate of Neil Favaron, deceased,	:
JACOB FELTNER,	:
KAREN FELTNER,	:
CAELA FINNELL,	:
JOSH FOGEL,	:
FRANCINE FORD,	:
LENNIE FOSSETT,	:
AMANDA FRANKS,	:
JOANN FRAZIER,	:
JULIE FREEMAN,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

AMY FULLER, :
MARK FUNK, JR., :
JUDITH GARDNER, :
CHRISTINE GOLDSTEIN, :
DONNA GOOD, :
GREG GRABER, :
MAURICE GRABOW, :
ERIN GREELISH, :
TODD GREEN, :
GLORIA GREENE, :
ROBBIE GREGORY, :
CARLA GRIESSMAN, :
SUSAN GRIFFIN, :
JENNY GRIMM, :
MELISSA HABERMEHL, :
LENORA HAGGARD, :
LYNN HALEY, :
ALYSSA HALL, :
DAVID HALL,
Administrator of the Estate of Lisa Hall, :
RUHAMA HALL, :
DESIREE PEYTON, :
Individually, and as Administrator of
the Estate of Jade Hamby, :
DOROTHEA HAMILTON, :
SAMANTHA HAMILTON, :

OHIO FIRST DISTRICT COURT OF APPEALS

COURTNEY HAMMONS,	:
GERALD HAMMONS,	:
TIMOTHY HANNON,	:
BRIANA HARRIS,	:
ADAM HARTMAN,	:
KEVIN HARTNESS,	:
JESSICA HASTINGS,	:
WAYNE HATFIELD,	:
SARA HAUENSTEIN,	:
DOUGLAS HAYES,	:
DOUGLAS HAYES, Administrator of the Estate of William Hayes,	:
MINUET HEALY,	:
LESLIE POWERS, Administrator of the Estate of Heather Hefner, deceased,	:
DENISE HELTON,	:
EVELYN HELTON,	:
THERESA HELTON,	:
DEBRA HENDERSON,	:
KELLY HENNESSY,	:
BARBARA HENSLEY,	:
RYAN HENSLEY,	:
JENNIFER HICKEY,	:
ALISSA HIGHTCHEW MESSER,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

KAREN HIGGINBOTHAN, :
MICHAEL HILLARD, :
DIRK HITCHCOCK, :
CELESTE HOFFMAN, :
LORETTA HON, :
CHELSEA HORTMAN, :
ROBERT HOUGHTON, SR., :
ROBERT HOUGHTON, JR., :
RICKY HOUNCHELL, :
RITA HOUNCHELL, :
KATHRYN HOWELL, :
MARY GERBUS, :
Administratrix of the Estate of Lois
Hughes, :
TAMMY HUGHES, :
CAROLYN HURSONG, :
DAVID HUSER,
as Executor of the Estate of Connie
Huser, deceased, :
GEORGE HUTCHINSON, :
MARTHA HUTTON, :
IRENE HYDE, :
JEFFREY HYDE, :
ELSA IERACI, :
ALYSSA JACKSON, :
DAMIAN JACKSON, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

TRACY JANSON, :
KIMBERLY JENKINS, :
STEPHANIE JOBE, :
AMBER JOHNSON, :
CHELSEA JOHNSON, :
KAREN JOHNSON, :
ROGER JOHNSON, :
SARA JONAS, :
KELLY JONES, :
Administratrix of the Estate of Dillon
Jones, :
JOAN JONES, :
RACHEL JONES, :
TAMMY JONES, :
JACQUELINE JUDKINS, :
JACQUELINE JUDKINS, :
as Administratrix of the Estate of Phyllis
Judkins, :
CHRISTOPHER MCCAUGHEY, :
as Administrator of the Estate of Sarah
Juergen, :
CATHY HOLLEY, :
Administratrix of the Estate of Linda
Kallmeyer-Ward, :
JOSH KAUFFMAN, :
KATELYN KAUFFMAN HOUSTON, :
THOMAS KELLISON, :
MICHELLE KEPLINGER, :
: :
:

OHIO FIRST DISTRICT COURT OF APPEALS

MARTHA KIBLER, :
DEBORAH KIDD, :
SHERRY KIDD, :
VIVIAN KIEFER, :
CHARLOTTE KING, :
MAGGIE KNAUER, :
as Executor of the Estate of Christopher :
Knauer, deceased, :
AMANDA KOCH, :
ROSE KOEHLER, :
SHANNON KOEHLER, :
MIKE KOELBLIN, :
VALARIE KOPP, :
LAURA KRANBUHL-MCKEE, :
LARRY KRECH, :
BRANDON LACINAK, :
NATASHA LAINHART, :
VICTORIA LANDRUM, :
SARA LANE, :
NICHOLAS LANGFORD, :
TOM LANTRY, :
KAREN LEGER, :
BETH LEISRING, :
SANDRA LEMMEL, :
KATIE LEHMKUHL, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

AILENE LEVAN,	:
HILARY LEVANDOFSKY,	:
ADRIAN LILLY,	:
DEREK LIST,	:
LYNNE LIST,	:
TAMMIE LITTLE,	:
TAMALA LOVETTE,	:
RHONDA MAINS,	:
SHIRLEY MAINS,	:
VICKY MAINS,	:
TAMMY MANN,	:
KENNETH MAHLENKAMP,	:
JACK MARCHESCHI,	:
SHARON HOWARD, as Administrator of the Estate of Paul Marksberry,	:
TIMOTHY MARSHALL,	:
JULIE MARTIN,	:
KELLY MARTIN, on behalf of her minor daughter Macy Acord,	:
MARSHA MARTIN,	:
STACY JOHN MARTIN,	:
ROBERT MASTERS,	:
TRACI MATTHEWS,	:
BRANDON MATHIS,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

KIMBERLY MAYER, :
DEREK MAYFIELD, :
JAMES MCCAIN, :
JENNA MCCALL, :
HEATHER MCCANN, :
HIRAM MCCAULEY, :
KYRA MCCLENDON, :
STACY FLETCHER,
as Executrix of the Estate of Jeffrey
McClure, :
KEVIN MCDONALD, :
MARCELLA MCDONALD, :
CANDI MCKINNEY, :
TERESA MCMILLEN, :
MARK MCMURREN, :
KAMERON MCNEAL, :
KERRY MCNEAL, :
TONIA MCQUEARY, :
TIFFANY MEADOWS, :
DAWN MERLAND, :
TIFFANY MESSERSCHMIDT, :
RANDALL METCALF, :
DIANE MEYER, :
TOM MEYERS, :
LYNDSEY MIDDENDORF, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

KAREN MILLER,	:
RYAN MILLER,	:
SAMANTHA MINK,	:
VERA MOFFITT,	:
JUNIOR MONROE,	:
BILLIE JEAN MOORE,	:
DEBBIE MOORE,	:
DONALD MOORE,	:
ROBERT MOORE,	:
STEPHANIE MOORE,	:
TIM MOORE,	:
WILLIAM MOORE,	:
JILL MORTHLAND,	:
ROBERT MOUNCE,	:
REBA MORGAN,	:
SARRA MUELLER,	:
JENNIFER MYERS,	:
JOETTA NAFE,	:
TONYA NEAL,	:
GARY NEU,	:
MARJORIE NEWMAN,	:
TERESA NICHOLS,	:
MICHELLE NOBLE,	:
GAIL NORDEMAN,	:
	:

OHIO FIRST DISTRICT COURT OF APPEALS

RUVIMBO NYEMBA, :
WENDY OBERLANDER, :
TIMOTHY OSBORN, :
DANNIE OWENS, :
HALEY PAYNE, :
JEFF PEDDICORD, :
DUANE PELFREY, :
NANCY PFETSCH,
as Executrix of the Estate of Kenneth :
Pfetsch, :
CLARENCE PHILLIPS, :
HEATHER PICKETT, :
JEFFREY POFF, :
SHEILA POGUE-KRABACHER, :
JEFF POTTS, :
ANTOINE POWELL, :
BRYAN POWERS, :
KATHERINE PRATER, :
HEATHER SCHUSTER,
as Executrix of the Estate of Lawrence :
Pridemore, :
TOM PRITCHARD,
as Executor of the Estate of Sharon :
Pritchard, deceased, :
SHERRI PUCKETT-MORRISSTTE, :
CAROL PUMMELL, :
MISTY EMERSON,
as Administrator of the Estate of Marcia :
:

OHIO FIRST DISTRICT COURT OF APPEALS

Quinn, deceased,	:
SANDRA RADEKE,	:
MARY RAVENSCRAFT,	:
TODD RAY,	:
SAMANTHA REDROW,	:
DANIELLE REED,	:
MARK REED,	:
JEAN FENNER, Executor of the Estate of Jane Reeder,	:
VALERIE REEVES,	:
CIERRA BARR, Administrator of the Estate of Holly Reifenberger,	:
JEFF REMLEY,	:
DERRILL REYNOLDS,	:
HARRY REYNOLDS,	:
KENT REYNOLDS,	:
LISA REYNOLDS,	:
JOHN RICHARDSON,	:
JORDAN RIBARIU,	:
JASON RILEY,	:
GORDON RISTER, as Administrator of the Estate of Donna Rister,	:
DEBORAH ROARK,	:
KELLY ROBINSON,	:
THERESA ROBBINSON-WOODS,	:

OHIO FIRST DISTRICT COURT OF APPEALS

DEBBIE RODRIQUEZ, :
JASON ROMER, :
DOROTHY ROSE, :
DEBORARY WORLEY, :
as Executrix of the Estate of Fay :
Rosebery, :
SANDRA ROUNDTREE, :
RONALD ROWLEY, :
JOSH ROY, :
STEPHEN CARMEN, :
as Administrator of the Estate of :
Kathrynn Rueve, :
ROBERT RUNTZ, :
CHRISTINA AND JOE RUTTER, :
Individually, and on behalf of their :
minor son, Caron Rutter, :
MIKE SAND, :
MICHAEL SANDER, :
CHRIS SCHEPER, :
ROBIN SCHILLER, :
JOSEPH SCHIMMEL, :
KIM SCHMIDT, :
KEVIN SCHMIT, :
PATRICK SCHMIT, :
BRANDON SCHOBORG, :
SUSAN SCHOCK, :
PAUL SCHOLZ, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

TIMOTHY SCHULZE, :
RONALD SCHUSTER, :
DELORES SCOTT, :
RHONDA SCOTT, :
ALI SCULLY, :
SARA SELM, :
DANA SETTERS, :
GLENNNA SHAFER, :
ASIA SHANNON, :
BRENDA SHELL, :
DAVIS SHEMPERT, :
CHARLANN SHEPHERD, :
PATRICIA SHOTT, :
Individually, and as the Executrix of the :
Estate of Gregory S. Shot, :
SHANDON SIMMONS, :
KAREN SISSON, :
MICHELLE SIZEMORE, :
HALEY WARREN, :
as Administrator of the Estate of Crystal :
Slone, :
DAVID SMITH, :
DONALD SMITH, :
STACI SMITH, :
ORRIS SMOOTE, :
DAVID SNIDER, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

SHERRY SPANGENBERG, :
CRYSTAL GARRISON, :
Administrator of the Estate of Billy :
Spivy, :
ZACHARY STACY, :
EDDIE STALLINGS, :
RICHARD STANFIELD, :
DAVID FISHER, :
as Administrator of the Estate of :
Michelle Stephens, :
PATRICK STEPHENSON, :
TEMPIE STEPHENSON, :
DARLENE STERLING, :
BERT STIDHAM, :
SIERRA STRATMAN, :
DEBORAH STURDIVANT, :
RYAN TANNER, :
KAREN TAYLOR, :
KATHLEEN TESLCHER, :
BEN THAELER, :
BRITTANY THEILMAN, :
BRIAN THIEN, :
EDWARD THIESSEN, :
ADRIENNE THOMAS, :
CLARA TUBBS-HILLS, :
CONNIE UNDERWOOD, :
MICHAEL COLLINS, :

OHIO FIRST DISTRICT COURT OF APPEALS

Administrator of the Estate of Kimberly Underwood,	:
JACKLEN UPCHURCH,	:
JORDAN VANCE,	:
ASHLEY WALKER,	:
SHANNON WALLACE,	:
VICKI WALLACE,	:
KATHERINE WALLS,	:
LINSDAY WALSH,	:
TRACEY WALSH,	:
MICHELLE WALTERS,	:
HELEN WARD,	:
MICHAEL WATKINS,	:
ELAINE WAXLER,	:
CATHLEEN WEBER,	:
DANIEL WEBBER,	:
LAURA WEISBECKER,	:
KIRSTIN WEISMAN,	:
CHRISTINA CANFIELD, Administratrix of the Estate of Regina Wesley,	:
TIMOTHY WHALEN,	:
VIOLET WHALEN,	:
LONNIE WHEELER,	:
SOPHIA WHITE,	:
JOSEPH WILDER, as Administrator of the Estate of	:

OHIO FIRST DISTRICT COURT OF APPEALS

Tamathy Wilder, :
TROY WILDER, :
BENJAMIN WILLIAMS, :
KELLY WILLIAMS, :
PATRICK WILLOUGHBY, :
CAROL WILSON, :
NODRA WEST, :
Administratrix of the Estate of Jetton :
Wilson, :
JOSEPH WILSON, :
PAUL WILSON, :
PAULA WILSON, :
ROBERT WILSON, :
TERRY WILSON, :
VICKY WILSON, :
DAWN WINGERT, :
PRISCILLA WITTMAYER, :
WILLIAM WOLDER, :
JARED WOLFE, :
AMBER WORK, :
DEBORAH WORLEY, :
TERESA WORLEY, :
CARLA WOOTEN, :
RON WRIGHT, :
as Executor of the Estate of Leah :
Wright, :
:

OHIO FIRST DISTRICT COURT OF APPEALS

CHERYL WYATT, :
EMANUAL WYATT, :
VERONICA YEAKLE, :
JOANN YOUNG, :
JUDY YOUNG, :
KEITH YOUNG, :
CORRINE ZACHARY, :
MARY ZUREICK, :
and :
HANNAH ZYMSLO, :
Plaintiffs-Appellants, :
vs. :
MICHAEL LYON, :
JAMES BROCKMAN, :
PAUL VOLLMAN, :
LINDHORST & DREIDAME CO., :
L.P.A., :
STEVE JANIK, :
and :
JANIK L.L.P., :
Defendants-Appellees. :
:

Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: January 23, 2026

OHIO FIRST DISTRICT COURT OF APPEALS

Croskery Law Offices and Robert F. Croskery for Plaintiffs-Appellants,

Montgomery Jonson, L.L.P., George D. Jonson and G. Todd Hoffpauir, for Defendants-Appellees Michael Lyon, James Brockman, Paul Vollman, and Lindhorst & Dreidame Co., L.P.A.,

Schroeder, Maundrell, Barbiere & Powers, Katherine L. Barbiere and John W. Hust, for Defendants-Appellees Steve Janik and Janik L.L.P.

NESTOR, Judge.

{¶1} The parties dispute whether the mediation privilege protects communications made during a break in trial. For the reasons set forth below, the answer is yes. We overrule appellants' assignment of error and affirm the trial court's judgment.

I. Factual and Procedural History

{¶2} Appellants are plaintiffs in numerous state and federal medical malpractice lawsuits against Dr. Atiq Durrani and his medical practice, the Center for Advanced Spine Technologies, Inc., ("CAST"). Appellees are legal counsel for Dr. Durrani, CAST, and Medical Protective (the insurer of Dr. Durrani and CAST).

{¶3} In 2013, as lawsuits compiled against him, Dr. Durrani fled to Pakistan. Appellees were sued in three federal actions, which claimed fraud and conspiracy for their alleged role in assisting Dr. Durrani's flight.

{¶4} Some of the medical malpractice trials against Dr. Durrani took place in the United States District Court for the Southern District of Ohio. During a break at one of these trials, in 2018, appellants allege that appellee Lyon promised good faith settlement negotiations in the medical malpractice lawsuits if appellants dropped the fraud and conspiracy suits against Durrani's legal counsel. Judge Michael Barrett, who was presiding over the trial, was present during this conversation. Appellants state that Judge Barrett requested that they drop the fraud and conspiracy suits. There is no formal record of this conversation.

{¶5} As a result of the communications made in front of and with Judge Barrett, appellants dismissed the federal fraud and conspiracy suits with prejudice.

{¶6} This triggered the instant litigation. Appellants filed suit in the Hamilton County Court of Common Pleas in July 2019. The complaint alleged that

appellees misled appellants into dismissing the suits, and that appellees had no intention of engaging in good faith settlement negotiations. Specifically, the original complaint contained five counts: fraud in the inducement, breach of an oral contract, promissory estoppel, civil conspiracy, and legal malpractice.

{¶7} The parties dispute the characterization of the conversation with Judge Barrett. Appellees view it as an informal mediation, conducted by Judge Barrett. Appellants, on the other hand, contend that the conversation was not part of any mediation.

{¶8} But appellants' view of this conversation has not been consistent. In their original July 2019 complaint, appellants refer to the conversation as an "informal mediation." Appellants filed an amended complaint in October 2019, which again used the term "informal mediation."

{¶9} Appellees subsequently filed motions to dismiss all claims. In April 2022, the trial court partially granted appellees' motions to dismiss. Following that order, three claims remained: fraud in the inducement, promissory estoppel, and civil conspiracy.

{¶10} Then, in June 2022, appellees filed their answer to appellants' complaint. In their answer, appellees admit that an informal mediation occurred. Accordingly, the occurrence of an informal mediation has been a pleaded to and admitted fact since June 2022.

{¶11} In January 2023, appellees filed a motion for a protective order, seeking to prohibit discovery of communications made during the informal mediation. The trial court granted a protective order in June 2023.

{¶12} In November 2023, over four years after filing their amended complaint, appellants sought to file another amended complaint. Appellants sought

to remove the language which characterized the conversation with Judge Barrett as an informal mediation. The trial court denied this motion in January 2024. In denying leave to amend, the trial court reasoned that significant time had passed since the filing of the original complaint. Additionally, the fact that an informal mediation had taken place was an admitted fact that the court had relied on when granting the June 2023 protective order.

{¶13} Appellants attempted to appeal the trial court's denial of leave to amend to this court. However, this court held that the January 2024 order was not a final order.

{¶14} Appellees then filed motions for summary judgment. In support, appellees argued that appellants could not prove fraud in the inducement, promissory estoppel, or civil conspiracy without evidence of the substance of the communications with Judge Barrett, which was barred from discovery due to the June 2023 protective order. Appellants admitted that without the contents of the conversation, they could not prove their claims.

{¶15} The trial court granted summary judgment in appellees' favor in December 2024. Appellants now challenge the trial court's grant of summary judgment.

II. Analysis

{¶16} Appellants bring three assignments of error. First, appellants argue that the trial court erred by granting a protective order on the grounds that the mediation privilege protected the statements made during the conversation with Judge Barrett. In the alternative, appellants next argue that assuming a mediation privilege did exist, the trial court erred in finding that mediation participants did not waive the privilege. Third and finally, appellants argue that the trial court erred by refusing to allow

amendment of the complaint.

{¶17} We address appellants' assignments of error out of order, because the third assignment is somewhat dispositive of the first two.

A. Third Assignment of Error

{¶18} In their third assignment of error, appellants allege that the trial court erred by refusing to allow them to amend the complaint. Appellants sought to remove language stating that an informal mediation occurred.

{¶19} We review the trial court's denial of a motion to amend a complaint under an abuse of discretion standard. *Henderson v. DeWine*, 2022-Ohio-1025, ¶ 15 (1st Dist.). “Civ.R. 15(A) governs the amendment of pleadings.” *Maas v. Maas*, 2020-Ohio-5160, ¶ 84 (1st Dist.). Civ.R. 15(A) provides that trial courts should grant leave to amend “when justice so requires.” *Id.*, quoting *Isco Industries, Inc. v. Great Am. Ins.*, 2019-Ohio-4852, ¶ 52 (1st Dist.).

{¶20} Trial courts should consider several factors in considering whether to grant leave to amend. *Maas* at ¶ 85. These factors include “whether the movant made a prima facie showing of support for the new matters sought to be pleaded, the timeliness of the motion, and whether the proposed amendment would prejudice the opposing party.” *Id.*, citing *Danopoulos v. Am. Trading II, LLC*, 2016-Ohio-5014, ¶ 24 (1st Dist.).

{¶21} We considered the timeliness of a motion for leave to amend a complaint in *Fiani v. Worldpay, LLC*, 2024-Ohio-304, (1st Dist.). In *Fiani*, a plaintiff filed for leave to amend over a year after filing the original complaint. *Id.* at ¶ 24. We held that because the plaintiff was aware of the information he sought to add nine months before seeking to amend, the motion for leave to amend was not timely filed. *Id.* at ¶ 24-26. See *Leo v. Burge Wrecking, LLC*, 2017-Ohio-2690, ¶ 3, 15 (6th Dist.)

OHIO FIRST DISTRICT COURT OF APPEALS

(holding that the trial court did not abuse its discretion in denying a motion for leave to amend filed two years after the original complaint); *McElwee v. Dayton Newspapers, Inc.*, 2004-Ohio-171, ¶ 33, 35 (2d Dist.) (holding that, where plaintiffs could have included claims known two years prior, the trial court did not abuse its discretion in refusing to allow amendment of the complaint).

{¶22} Here, appellants sought to amend their complaint to remove language that an informal mediation took place with Judge Barrett during a break in trial. Critically, appellants sought leave to amend over *four years* after they filed the original complaint. Appellants did not seek to add any new information to the complaint. Rather, appellants sought to change how the complaint characterized the conversation with Judge Barrett.

{¶23} In denying appellants' motion to amend, the trial court stated that the circumstances did not justify granting leave to amend, "especially when considering the length of time [the fact that an informal mediation had taken place] had been admitted to and had, in effect, been agreed to by the parties[.]" The trial court also reasoned that allowing amendment of the complaint was improper because the court had relied on this fact when granting a protective order.

{¶24} We hold that under the circumstances here, appellants' motion to amend was not timely. Accordingly, the trial court's refusal to allow amendment of the complaint was not an abuse of discretion. "[W]here a motion for leave to file an amended complaint is not timely tendered and there is no apparent reason to justify the delay, a trial court does not abuse its discretion in denying a proposed amendment." *Meehan v. Mardis*, 2022-Ohio-1379, ¶ 6 (1st Dist.), quoting *Franciscan Communities, Inc. v. Rice*, 2021-Ohio-1729, ¶ 37 (8th Dist.), citing *State ex rel. Smith v. Adult Parole Auth.*, 61 Ohio St.3d 602, 603-604 (1991).

{¶25} In the alternative, appellants argue that the trial court erred by not allowing amendment of the pleadings to conform to the evidence under Civ.R. 15(B). But Civ.R. 15(B) does not apply in this case, because it has not gone to trial. *Siegel v. Lifecenter Organ Donor Network*, 2011-Ohio-6031, ¶ 53 (1st Dist.) (“[Civ.R. 15(B)] is applicable only in cases that have gone to trial[.]”).

{¶26} The trial court did not abuse its discretion in denying appellants’ motion to amend the pleadings. The third assignment of error is overruled.

B. First Assignment of Error

{¶27} We now return to appellants’ first assignment of error. The trial court granted a protective order on the grounds that the mediation privilege protects certain statements from discovery. Appellants contest this grant on appeal.

{¶28} Generally, appellate courts review discovery orders under an abuse of discretion standard. *Yost v. Schaffner*, 2020-Ohio-5127, ¶ 23 (5th Dist.), citing *Med. Mut. of Ohio v. Schlotterer*, 2009-Ohio-2496, ¶ 13. But a ruling on the discoverability of alleged privileged information is reviewed de novo. *Yost* at ¶ 23, citing *Roe v. Planned Parenthood Southwest Ohio Region*, 2009-Ohio-2973, ¶ 29.

{¶29} Appellants first assert that the agreement that took place during a break in trial did not occur as part of a mediation. But, as described above, the trial court did not abuse its discretion in refusing to allow appellants to amend their complaint. Thus, the fact that an informal mediation occurred is an admitted fact.

{¶30} Next, appellants argue that the agreement that took place in front of Judge Barrett could not have been a mediation, because it took place in open court. In support of this argument, appellants cite R.C. 2710.05(A)(2). Under this statute, “[t]here is no privilege . . . for a mediation communication . . . made during a session of a mediation that is open, or is required by law to be open, to the public[.]” R.C.

2710.05(A)(2).

{¶31} But appellants did not raise this argument in the trial court, and therefore, did not properly preserve the issue for appeal. *See Goldfuss v. Davidson*, 79 Ohio St.3d 116, 121 (1997). Our review is thus confined to plain error. *Id.* Appellants do not raise any plain-error arguments on appeal. This court has previously declined to make plain-error arguments on parties' behalf, and we decline to do so here. *E.g., Cable Busters, LLC v. Mosley*, 2020-Ohio-3442, ¶ 8 (1st Dist.).

{¶32} Accordingly, we overrule the first assignment of error.

C. Second Assignment of Error

{¶33} Appellants bring their second assignment of error in the alternative to their first. In this assignment, appellants argue that, assuming a mediation did occur, the trial court erred by finding that appellees did not waive the mediation privilege.

{¶34} “When the discovery of confidential or privileged information is at issue . . . reviewing court[s] appl[y] a *de novo* standard.” *Yost*, 2020-Ohio-5127, at ¶ 23 (5th Dist.), citing *Roe*, 2009-Ohio-2973, at ¶ 29.

{¶35} Mediation communications are privileged, unless an exception applies. *Anthony v. Andrews, M.D.*, 2009-Ohio-6378, ¶ 17. One such exception occurs when all parties expressly waive the privilege. *Id.* R.C. 2710.04 provides for waiver “if the privilege ‘is expressly waived by all mediation parties and by the mediator (in regard to a mediation communication of the mediator) or the nonparty participant (in regard to the nonparty participant’s) mediation communication.’” (Cleaned up.) *Am. Environmental Group, Ltd. v. H.M. Miller Constr. Co.*, 2014-Ohio-4681, ¶ 20 (8th Dist.), quoting R.C. 2710.04(A).

{¶36} Appellants claim that appellees waived the mediation privilege by referencing topics discussed at the mediation during a deposition and in affidavits.

OHIO FIRST DISTRICT COURT OF APPEALS

But merely referencing topics does not rise to the level of *express* waiver required by the statute. (Emphasis added.) *See* R.C. 2710.04. Accordingly, appellees did not waive the privilege.

{¶37} Appellants' second assignment of error is overruled.

III. Conclusion

{¶38} Because we find no error, we affirm the judgment of the trial court.

Judgment affirmed.

KINSLEY, P.J., and MOORE, J., concur.