

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

BRANDI BOOTH, AS	:	
ADMINISTRATRIX OF THE ESTATE	:	CASE NO. CA2026-03-034
OF DUSTIN BOOTH,	:	
Appellant,	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	8/17/2026
vs.	:	
ROBERT BUCHANAN, et al.,	:	
Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV 2024 10 2048

Surdyk, Dowd & Turner Co., L.P.A., and Christopher T. Herman and Dawn M. Frick, for appellees.

Kircher Law, LLC, and Konrad Kircher, for appellant.

OPINION

SIEBERT, J.

{¶ 1} Dustin Booth suffered from a severe, sudden mental health crisis. Dustin's family, his friends, medical professionals, and officers in the Monroe Police Department

made efforts to get Dustin the help he desperately needed. Those efforts ended when officers conducted a traffic stop against Dustin, with the goal of taking him to the hospital for treatment. Tragically, Dustin pulled a firearm out during the traffic stop, the officers shot him, and Dustin died. Dustin's widow, Brandi, subsequently brought lawsuits in federal and state court, alleging those responsible for making decisions surrounding his medical care as well as the planning and execution of the traffic stop should bear legal consequences for his death.

{¶ 2} In this appeal, we must decide whether Brandi's state law claims for wrongful death and survivorship are precluded from moving forward because a federal court found Chief Robert Buchanan and Lt. Mike Rosenbalm had qualified immunity under federal law. We hold those state law claims are precluded as a result of the federal litigation. Brandi had a full opportunity to argue the facts and issues surrounding the propriety of Chief Buchanan and Lt. Rosenbalm's actions in federal court. That court determined those actions were reasonable under the law, entitling the officers involved to qualified immunity. The doctrine of collateral estoppel applies to the facts and issues supporting the federal court's finding of reasonableness and is dispositive here. Because Brandi is precluded from relitigating the same facts and issues here as she did in federal court, there can be no genuine issue of fact in dispute that shows either Chief Buchanan or Lt. Rosenbalm acted recklessly under Ohio law. Therefore, we affirm.

Background

Events Leading to Dustin's Death

{¶ 3} Dustin had no history of mental health issues. However, in the months leading up to February 2022, he began exhibiting unusual behavior, including believing the earth is flat, sleeping less, losing weight, and consuming large amounts of cannabis via a vape pen. Brandi and Dustin's mother eventually grew so concerned about Dustin's

behavior that they called the Monroe Police. Law enforcement and crisis intervention specialists responded to evaluate Dustin and later transported him to the hospital. There, Dustin was diagnosed with bipolar disorder with mania.

{¶ 4} After several days, hospital staff believed Dustin's mania appeared controlled and discharged him with instructions to keep taking his newly prescribed medications. However, Dustin did not take his medications, and his behavior quickly became erratic and concerning once again. Monroe Police and highway patrol officers responded to another call to Dustin's home but declined to take him to the hospital because Dustin did not appear to pose a danger to others or himself.

{¶ 5} Several days later, Brandi called the police again, telling them she now believed Dustin was a danger to himself and others and may possess a firearm in his truck. When law enforcement later came into contact with Dustin in the Booths' neighborhood, he refused to cooperate, drove back to his residence, and went inside. Law enforcement, crisis intervention specialists, and tactical negotiators all came to the home to de-escalate the situation. Brandi told every officer she encountered that Dustin had firearms in the house.

{¶ 6} Chief Buchanan was present during this response at Dustin's house (defendants Lt. Rosenbalm and Officer Fred Doughman were not). Chief Buchanan eventually ordered all officers to withdraw except for unmarked units. After returning to the police station, Chief Buchanan conducted a debriefing with the officers. However, Chief Buchanan testified he left the room repeatedly to talk to other members of the department and had no knowledge of the plan that the other on-duty officers began to develop to conduct a traffic stop to get custody of Dustin and return him to the hospital.

{¶ 7} Sgt. Robert Meyers was present during officers' initial response to Dustin's house that day, during the debrief/planning session, and at Dustin's fatal traffic stop. Sgt.

Meyers testified via deposition that the stop "wasn't planned to happen any certain way" because of the "numerous variables that [officers] couldn't account for." He stated there was no plan other than that if Dustin left the house, officers would conduct the traffic stop and get Dustin medical attention.

{¶ 8} At some point during the day, Dustin's friend, Justin Duh, went over to the Booths' home to calm down Dustin and was allowed inside. Later that day, after officers had left the scene, Dustin and Duh left the house together. Dustin brought a firearm with him. Duh continuously communicated with officers and informed them of their plan to leave the home and Dustin's possession of the firearm.

{¶ 9} Lt. Rosenbalm, the third shift supervisor, arrived at work that evening and was informed by Sgt. Meyers of the ongoing situation with Dustin. Concerned that Dustin left the house armed, Sgt. Meyers recommended officers not conduct the stop. However, Lt. Rosenbalm determined a show of force as well as Duh's presence would get Dustin to comply with officers. Lt. Rosenbalm ordered Officer Doughman to go to the scene with his canine officer as part of that show of force. Lt. Rosenbalm testified there was no additional time to consider bringing in the crisis intervention specialists because the traffic stop began approximately 15 minutes after his shift started.

{¶ 10} When officers initiated the stop, they observed a struggle inside the vehicle between Duh and Dustin to gain possession of the firearm. Duh subsequently exited the vehicle and stated Dustin had the gun. Dustin then exited the vehicle with the firearm and began walking away toward a busy intersection, ignoring Officer Doughman's commands. Officer Doughman deployed the canine (which did not make contact with or bite Dustin) and attempted a hands-on takedown of Dustin. During the struggle, Officer Doughman observed Dustin reaching into his waistband and saw part of the firearm. As Dustin began raising the firearm, officers shot Dustin. Dustin later died from his injuries.

Federal Litigation

{¶ 11} Brandi filed suit in federal court as administratrix of Dustin's estate. The suit included both federal and state claims. Relevant federal claims included (1) unlawful seizure/detention and excessive force in violation of the Fourth Amendment to the U.S. Constitution against the officers who conducted the traffic stop and (2) failure to train, inadequate supervision, and ratification against Chief Buchanan and Lt. Rosenbalm. *Booth v. Lazzara*, 2024 WL 4363213, *7 (S.D.Ohio Sept. 30, 2024) ("*Booth D.C.*"). Brandi argued that the "ratification (indeed, initiation of the plan) was a moving force in causing the constitutional violation." *Id.* at *11. Brandi's state claims included wrongful death claims against all defendants.

{¶ 12} Law enforcement defendants—including Chief Buchanan and Lt. Rosenbalm—filed for summary judgment, asserting qualified immunity barred Brandi's claims. As to the unlawful detention/seizure claim, the trial court concluded that there was "probable cause to support the decision to stop Dustin's truck if and when he left the Brandi home" given the events of that day. *Booth D.C.* at *11. As to the excessive force claim, the trial court determined "a reasonable officer in Doughman's position could see Dustin as a growing and imminent threat to the officers and other people in the area as he walked [away from law enforcement and] toward a busy intersection and nearby businesses." *Id.* at *14. In light of these circumstances, the trial court concluded the use of physical force to tackle Dustin to the ground was reasonable. *Id.* It should be noted that Brandi did not assert the act of shooting Dustin violated any of his constitutional rights.

{¶ 13} The trial court also determined that "without an underlying violation of Dustin's constitutional rights . . . approval or initiation of the plan to perform a traffic stop on Dustin's truck [could not constitute] a constitutional violation. *Id.* at *11. Having dismissed all of Brandi's federal claims, the trial court elected to not exercise

supplemental jurisdiction over the remaining state law claims and dismissed them without prejudice. *Id.* at *15.

{¶ 14} The Sixth Circuit Court of Appeals affirmed the district court's decision. See *generally Booth v. Lazzara*, 164 F.4th 581 (6th Cir. 2026) ("*Booth C.A.*"). In relevant part, the court found that law enforcement "had an objective basis to believe that a mentally unstable Booth posed a danger to the officers, to bystanders, and to himself" during the traffic stop. *Id.* at 592. As a result, the court concluded it was reasonable for officers "in this tense, uncertain, and rapidly evolving situation" to conduct the traffic stop and later to use "some degree of force to detain him." (Internal quotations and emphasis omitted.) *Id.* at 592-593. While recognizing Brandi's "legitimate questions about how her sincere efforts to get her husband mental-health treatment could turn into a fatal shooting" the court concluded the "officers' conduct did not violate the law because of the obvious danger that Booth posed." *Id.* at 594.

{¶ 15} The court did not comment on the state law claims other than acknowledging they were dismissed by the trial court. *Id.* at 588.

State Litigation

{¶ 16} Brandi's state law claims were subsequently refiled in the Butler County Court of Common Pleas. Chief Buchanan and Lt. Rosenbalm again filed for summary judgment, arguing they were immune under R.C. 2744.03 and that the federal litigation collaterally estopped Brandi from further litigating the legal propriety of their actions.

{¶ 17} The trial court granted their motion for summary judgment. In relevant part, the trial court found Chief Buchanan "was not present and had no knowledge when the on duty officers began to develop a plan . . . to get Booth into custody." As to Lt. Rosenbalm, the trial court found that when he—the third shift supervisor—arrived, "the plan was rapidly evolving and demanded prompt decision-making" due to Dustin being

armed. As a result, the court concluded "the facts presented do not support a finding of reckless, malicious, wanton, or willful conduct, nor conduct undertaken in bad faith" which would exempt them from immunity.

{¶ 18} The trial court also concluded collateral estoppel applied to Brandi's state law claims. The trial court reasoned that the federal court's Fourth Amendment rulings "foreclose[d] [Brandi's] wrongful death claim as a matter of law, because there is no evidence of any wrongful act, neglect, or default . . . that proximately caused [Dustin's] death . . ." As to Chief Buchanan and Lt. Rosenbalm, the court stated, "[a]bsent personal involvement in the planning or the execution of the traffic stop, [they] are not liable for Booth's death."

{¶ 19} Brandi now appeals to this court.

Summation of Brandi's Two Assignments of Error

{¶ 20} On appeal, Brandi asserts two assignments of error. First, she argues material issues of fact made summary judgment in favor of Chief Buchanan and Lt. Rosenbalm improper. She claims that "[b]oth the planning (initiated and designed by Buchanan) and the execution (ordered and supervised by Rosenbalm) of the traffic stop consciously disregarded the obvious risk of confronting a mentally ill, otherwise upstanding citizen, who possessed a gun and did not want to return to the hospital." In other words, Brandi asserts Chief Buchanan and Lt. Rosenbalm were reckless in planning, ordering, and supervising a high-risk stop of Dustin. She argues measures including establishing a 360-degree perimeter around the stop area, having crisis intervention specialists on site, using de-escalation tactics during the stop, and the development of contingency plans in the event Dustin left his home with a gun, should have been considered and utilized but were not. Brandi also claims "the planning and execution of the traffic stop flagrantly violated Monroe policies for dealing with mentally ill

subjects."

{¶ 21} In her second assignment of error, Brandi argues the trial court improperly applied collateral estoppel to the facts of this case. Her argument rests solely on the fact that the federal courts dismissed her state law claims without prejudice, meaning "[t]here was no final judgement on recklessness" under Ohio law as opposed to the constitutional reasonableness of law enforcement's planning, detention, and use of force.

{¶ 22} We will address the issue of collateral estoppel first because, when applicable, the doctrine procedurally bars further litigation of the same facts and issues, necessarily leading to the conclusion that there can be no genuine issue of material fact in dispute sufficient to prevent summary judgment.

Applicable Law

Collateral Estoppel

{¶ 23} "Application of the doctrine of res judicata/collateral estoppel to a particular issue is a question of law" that we review de novo. *Lycan v. Cleveland*, 2022-Ohio-4676, ¶ 21, quoting *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 2007-Ohio-6594, ¶ 41 (10th Dist.). Collateral estoppel "prevents parties or their privies from relitigating facts and issues in a subsequent suit that were fully litigated in a prior suit." *Thompson v. Wing*, 70 Ohio St.3d 176, 183 (1994). The doctrine "applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action." *Id.*

{¶ 24} Importantly, a party's causes of action in separate proceedings do not need to be the same for collateral estoppel to apply. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 1998-Ohio-435, ¶ 14. Moreover, "[i]f the same evidence would sustain both issues, then the two issues are the same for purposes of applying collateral

estoppel." *Id.* at ¶ 18. Stated differently, even where state and federal standards are different but "revolve around the same factual issue," collateral estoppel will apply. *Id.* at ¶ 19. See also *Mt. Pleasant Blacktopping Co. v. Inverness Group, Inc.*, 2025-Ohio-284, ¶ 33 (1st Dist.) (Noting that "despite the different causation standards" at issue in *Frye*, both retaliation theories at issue would be supported with the same evidence).

{¶ 25} In this appeal, the issue before us is whether the first element of collateral estoppel—whether the same facts or issues were actually and directly litigated in prior federal court proceedings—is satisfied. Specifically, the parties contest what, if any, impact federal court determinations regarding qualified immunity have on Brandi's state law claims against Chief Buchanan and Lt. Rosenbalm. To assess this, we first review and compare federal and state immunity standards.

Federal Immunity

{¶ 26} Law enforcement officers are entitled to qualified immunity under federal law unless a plaintiff can "show that the officers violated the Fourth Amendment and that then-existing precedent put this violation beyond debate." (Internal quotations omitted.) *Booth C.A.*, 164 F.4th 581 at 590. The Fourth Amendment to the U.S. Constitution prohibits unreasonable seizures and excessive use of force by law enforcement. However, law enforcement can "seize individuals for mental-health evaluations—what [courts] have called 'mental-health seizures'—if they have 'probable cause' that the individuals 'pose a danger to themselves or others.'" *Id.* at 591, quoting *Helms ex rel. Helms v. Boyd Cty. Sheriff's Dept.*, 2025 WL 1693827, at *4 (6th Cir. June 17, 2025). "[C]ourts must objectively evaluate whether a seizure meets this test from the perspective of a reasonable officer on the scene—not through the filter of hindsight." (Internal quotations omitted.) *Id.*

{¶ 27} "To decide whether force was warranted or unjustified, [courts] consider the

totality of the circumstances from a *reasonable* officer's objective perspective." (Emphasis added.) *Id.* at 592. To analyze police seizures and use of force involving individuals with mental health issues, courts "ask whether individuals suffered from a medical condition that might lead them to pose a danger and whether the force used was reasonably necessary to eliminate this danger." (Internal quotations omitted.) *Id.*

State Immunity

{¶ 28} Generally speaking, law enforcement is also immune from civil liability under Ohio law unless one of several statutorily identified exceptions apply. See R.C. 2744.03. One exception is when an otherwise immune "employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner." R.C. 2744.03 (A)(6)(c). Recklessness is the relevant term on appeal. "Reckless conduct is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is *unreasonable under the circumstances* and is substantially greater than negligent conduct." (Emphasis added.) *Anderson v. Massillon*, 2012-Ohio-5711, ¶ 34; *Estate of Smith v. W. Brown Local School Dist.*, 2015-Ohio-154, ¶ 57 (12th Dist.). Thus, recklessness "is subject to a high standard." *Estate of Smith* at ¶ 58.

Analysis

{¶ 29} Upon review, we conclude Brandi's state law claims are barred by the doctrine of collateral estoppel. In doing so, we observe that federal and state courts have repeatedly acknowledged the interplay between their separate immunity inquiries. As stated by the Sixth Circuit Court of Appeals, "When federal qualified immunity and Ohio state-law immunity . . . rest on the same questions of material fact, we may review the state-law immunity defense 'through the lens of the federal qualified immunity analysis.'" *Hopper v. Phil Plummer*, 887 F.3d 744, 759 (6th Cir. 2018), quoting *Chappell v. City of Cleveland*, 585 F.3d 901, 907 fn.1 (6th Cir. 2009). See also *Heeter v. Bowers*, 99 F.4th

900, 922 (6th Cir. 2024) (stating Ohio immunity standard "overlaps with [the] qualified immunity analysis because officers act in a 'wanton or reckless' manner when they violate an individual's clearly established constitutional rights."); *Estate of Lewis v. Anderson*, 2026-Ohio-2096, ¶ 28 (10th Dist.) ("the Fourth Amendment objective-reasonableness standard may serve as a helpful analytical tool because it helps distinguish objectively reasonable conduct from conduct reflecting a higher degree of culpability.").

{¶ 30} Because of this overlap in immunity standards, federal decisions have repeatedly (though not uniformly) exercised jurisdiction over state law claims and found members of law enforcement to be immune under state law after finding federal immunity applied to their actions. See e.g. *Chappell*, 585 F.3d at 907 fn.1 ("Inasmuch as plaintiff has failed to demonstrate that defendants' conduct was objectively unreasonable, it follows that she has also failed to demonstrate that defendants acted with 'malicious purpose, in bad faith, or in a wanton or reckless manner,' such as is required to avoid statutory immunity under Ohio law . . ."); *Cooper v. City of Columbus*, Ohio, 2023 WL 1434055, *9 (6th Cir. Feb. 1, 2023) ("[B]ecause both officers reasonably perceived a serious threat of injury, they are entitled to statutory immunity under Ohio law."); *Pollard v. City of Columbus*, 780 F.3d 395, 404 (6th Cir. 2015) ("If the officers were objectively reasonable in shooting [the decedent], it logically follows that they could not have been reckless in shooting [him]."); *Mullins v. Cyranek*, 805 F.3d 760, 769 (6th Cir. 2015); *Ewolski v. City of Brunswick*, 287 F.3d 492, 517 (6th Cir. 2002).

{¶ 31} In instances where the federal courts dismissed a plaintiff's state law claims against law enforcement officials, Ohio state courts have addressed the preclusive effect of federal litigation on subsequent state proceedings where both dealt with the issue of immunity. See generally *Jordan v. Howard*, 2021-Ohio-4025 (2nd Dist.); *Ferrante v. Peters*, 2008-Ohio-3799, ¶ 26 (8th Dist.).

{¶ 32} The facts in *Jordan*, as summarized by the Sixth Circuit Court of Appeals during federal litigation, were as follows:

During the early morning hours of October 20, 2017, Jamarco McShann was asleep in the driver's seat of a locked, running car with his right hand resting on a pistol in his lap and music blaring from the car stereo. Just seconds after police officers roused him from his slumber, McShann stopped complying with their orders that he keep his hands up and away from the gun. He instead reached down, grabbed the gun, and swung it towards the driver-side door, where two officers were positioned. Fearing for their safety and that of their fellow officers, Officers Jerry Knight and John Howard opened fire, shooting and killing McShann.

Id. at ¶ 73, quoting *Jordan v. Howard*, 987 F.3d 537, 539 (6th Cir. 2021). The federal courts determined the officers were immune from suit, finding they "acted reasonably to stop a serious threat of deadly force" when McShann reached for his gun. *Id.* at ¶ 3.

{¶ 33} The district court did not exercise supplemental jurisdiction over plaintiff's state claims, and when those claims were subsequently refiled in state court, the trial court dismissed the wrongful death claim, finding collateral estoppel applied. *Id.* at ¶ 3, 15. The Second District Court of Appeals affirmed, observing that "[t]he underlying facts are the same if the issue were phrased as whether the officers acted recklessly or if it were phrased as whether the officers acted reasonably for purposes of qualified immunity." *Id.* at ¶ 71. The court further noted that the parties "had a full opportunity to litigate" the issue of the propriety of the officer's actions. *Id.* at ¶ 72. The court concluded:

In view of the findings in the federal district and appellate courts that the officers' use of deadly force (resulting in McShann's death) was reasonable, and that they did not violate established law, it would be factually and logically inconsistent to conclude in this action that the officers were reckless in causing McShann's death and, therefore, were not entitled to immunity under [state law].

Id. at ¶ 75. See also *Estate of Lewis*, 2026-Ohio-2096 at ¶ 28 (10th Dist.) ("[I]f an officer's use of force is objectively reasonable under the circumstances, then it cannot satisfy the

heightened culpability necessary to establish recklessness or wantonness, much less bad faith or malicious conduct.").

{¶ 34} In *Ferrante*, police officers located and surrounded a vehicle driven by the Ferrantes (husband and wife) after law enforcement received a 911 call stating that an individual in a vehicle similar to the Ferrantes' flashed a gun. *Ferrante*, 2008-Ohio-3799 at ¶ 2 (8th Dist.). During the ensuing confrontation, police fired shots at the Ferrantes' vehicle. *Id.* at ¶ 5-6. No one was hurt, and the Ferrantes were later taken into custody. *Id.* at ¶ 7. In subsequent federal proceedings brought by the wife (the husband's claims were voluntarily dismissed with prejudice) the district court held that the officer's actions did not violate any of the wife's rights, "were made in a good faith effort to maintain and restore order," and were not "malicious or sadistic." *Id.* at ¶ 8, 27. The federal court refused to exercise supplemental jurisdiction of the wife's state claims, and after remand to state court, the officers were granted summary judgment. *Id.* at ¶ 9, 11. The Eighth District Court of Appeals affirmed, stating:

Although we do not equate the terms "reckless" and "wanton" with bad faith and malice, we do not see, nor does [plaintiff] argue, how we could make a finding that the officers' actions were wanton and reckless after a court of competent jurisdiction has previously held that the officers' actions were in good faith and without malice. Thus, we agree with the officers that the federal court's findings preclude a different result in the instant case.

Id. at ¶ 33.

{¶ 35} Consistent with the legal reasoning in *Jordan* and *Ferrante*, application of collateral estoppel in this case is appropriate, meaning Chief Buchanan and Lt. Rosenbalm are immune from Brandi's state law claims. The facts did not change from those asserted in the federal case. Brandi supported her state law claims with the same evidence she used to support her federal claims. Brandi argued in federal court that the

initiation and approval of a high-risk traffic stop "was a moving force" in Dustin's death and the alleged violation of his constitutional rights. But the district court determined the conduct of the officers who conducted the traffic stop was reasonable and that "without an underlying violation of Dustin's constitutional rights . . . [the] approval or initiation of the plan to perform a traffic stop on Dustin's truck [could not constitute] a constitutional violation." *Brandi D.C.*, 2024 WL 4363213, at *11. The Sixth Circuit did not disturb that determination.

{¶ 36} Chief Buchanan and Lt. Rosenbalm's immunity status for their role in the events leading to Dustin's death is the exact same legal issue before this court. Despite the fact that federal and state immunity standards are different, "[t]he underlying facts are the same if the issue were phrased as whether the officers acted recklessly or if it were phrased as whether the officers acted reasonably for purposes of qualified immunity." *Jordan*, 2021-Ohio-4025 at ¶ 71 (2nd Dist.). Brandi had the opportunity to litigate these facts in federal court. There, the district court determined there was no genuine issue of fact that the actions of all involved were reasonable and protected by federal immunity. Given this result, it would be "factually and logically inconsistent" for this court to find that a genuine issue of material fact exists as to whether Chief Buchanan and Lt. Rosenbalm were *reckless* for ordering a traffic stop already found *reasonable* by federal courts. *Id.* at ¶ 75.

{¶ 37} We overrule Brandi's first and second assignments of error.

Conclusion

{¶ 38} We doubt it brings Brandi any solace for us to acknowledge, like the federal courts before us, the unmitigated tragedy the facts this case present. It is all too easy to wonder if and how things could have turned out differently. Despite this, the parties have already litigated the propriety of law enforcement's actions that night, including those of

Chief Buchanan and Lt. Rosenbalm, in federal court. There, it was determined that law enforcement's actions—though undisputably tragic in result—were reasonable under the law. The doctrine of collateral estoppel therefore precludes later proceedings from coming to the inconsistent conclusion that Chief Buchanan's and Lt. Rosenbalm's actions could nonetheless meet the heightened culpability of recklessness under Ohio law.

{¶ 39} Judgment affirmed.

HENDRICKSON, P.J., and PIPER, J., concur.

JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ Robert A. Hendrickson, Presiding Judge

/s/ Robin N. Piper, Judge

/s/ Melena S. Siebert, Judge