[Cite as *Brown v. Cleveland*, 2026-Ohio-4285.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

PATRICE M. BROWN, :

Plaintiff-Appellant, :

No. 116117

v. :

CITY OF CLEVELAND, ET AL., :

Defendant-Appellee. :

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 29, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-25-128843

Appearances:

Nager, Romaine & Schneiberg Co., L.P.A., and Jennifer L. Lawther, *for appellant*.

Mark D. Griffin, Cleveland Director of Law, and Jonathan L. Cudnik, Assistant Law Director, *for appellee* City of Cleveland.

Dave Yost, Ohio Attorney General, and Christopher A. Gray, Assistant Attorney General, Bureau of Workers' Compensation, *for appellee* Administrator, Ohio Bureau of Workers' Compensation.

EMANUELLA D. GROVES, P.J.:

{¶ 1} This cause came to be heard on the accelerated calendar pursuant to App.R. 11.1 and Loc.App.R. 11.1.[1] Plaintiff-appellant Patrice M. Brown ("Brown") appeals the decision of the trial court granting defendants-appellees the Bureau of Workers' Compensation ("BWC") and the City of Cleveland's ("Cleveland") (collectively, the "Appellees"), motions to dismiss. Her sole assignment of error states:

> The trial court erred in granting defendant-appellee's motion to dismiss for lack of jurisdiction because Ohio's Saving Statute permits a plaintiff to refile a claim within one year of its dismissal otherwise than on the merits.

{¶ 2} For the reasons that follow, we reverse and remand the case to the trial court.

I. Factual and Procedural History

{¶ 3} The within matter began when Brown applied for workers' compensation benefits after a workplace injury while working for Cleveland. She was granted benefits and subsequently applied for an additional allowance because of a spinal injury that she claimed was a result of the original incident. The Industrial Commission of Ohio denied her claim in November 2022. Brown filed a timely notice of appeal and a petition and complaint in the Cuyahoga County Common Pleas Court listing BWC and Cleveland as defendants. In June 2023, Brown filed a notice of voluntary dismissal pursuant to Civ.R. 41(A).

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[1] "The purpose of an accelerated appeal is to allow this court to render a brief and conclusory opinion." *State v. Priest,* 2014-Ohio-1735, ¶ 1 (8th Dist.).

{¶ 4} Brown refiled the complaint less than a year after the dismissal. When Brown failed to appear for a deposition and for the final pretrial, Appellees made a joint oral motion to dismiss. The trial court subsequently dismissed the complaint, without prejudice, pursuant to Civ.R. 41(B)(1). Brown filed a motion for relief from judgment pursuant to Civ.R. 60(B) and a notice of appeal on the same date. Later that day, the trial court denied Brown's motion, finding that the case was dismissed with prejudice and Brown could appeal the ruling. The following day, this court dismissed the appeal for lack of a final appealable order.

{¶ 5} Less than a year after the dismissal, Brown refiled the complaint for the third time. In December 2025, BWC filed a motion to dismiss, citing Civ.R. 12(B)(1) and R.C. 2305.19, the saving statute. In January 2026, Cleveland filed a motion to dismiss, citing the same authority. Both defendants argued that the trial court lacked subject-matter jurisdiction to hear the complaint because the statute of limitations had expired on Brown's claim and she previously used the saving statute to refile her case and could not use it again. Brown filed a responsive brief to BWC's motion, but did not file a response to Cleveland's motion. Brown argued that she was permitted to refile the complaint because the case was dismissed otherwise than on the merits and the saving statute allowed her to file the complaint a third time, citing *McCullough v. Bennett*, 2024-Ohio-2783. The trial court granted both motions to dismiss. In its journal entry addressing BWC's motion, the court noted that it granted the motion to dismiss "based on lack of jurisdiction due to [the] filing date."

{¶ 6} Brown filed the instant appeal.

II. Law and Analysis

{¶ 7} As a preliminary matter, we address the scope of this appeal. Brown's notice of appeal only references the January 12, 2026 entry dismissing her claims against BWC and not the January 19, 2026 entry dismissing her claims against Cleveland. Because the issues are the same and Cleveland fully participated in this appeal, we find that Brown's notice of appeal was timely filed with respect to both decisions and address both rulings. With that in mind, we analyze Brown's assignment of error.

{¶ 8} This case hinges on the interpretation of R.C. 2305.19 and whether the procedural history of this case would permit Brown to file her workers' compensation appeal a third time after a dismissal "otherwise than on the merits." We review the interpretation of a statute under the de novo standard of review. *Real Est. Tax Investors Retirement Equity v. Butler*, 2025-Ohio-545, ¶ 10 (8th Dist.), citing *State v. Straley*, 2014-Ohio-2139, ¶ 9. We therefore must undertake an independent review without deference to the trial court's determination. *Id.*, citing *Matrix Technologies, Inc. v. Kuss Corp.*, 2008-Ohio-1301, ¶ 11 (6th Dist.), citing *Brown v. Cty. Commrs. of Scioto Cty.*, 87 Ohio App.3d 704, 711 (4th Dist. 1993).

{¶ 9} Relevant to this appeal, R.C. 2305.19 provides:

> In any action that is commenced or attempted to be commenced . . . if the plaintiff fails otherwise than upon the merits, the plaintiff . . . may commence a new action within one year after the date of . . . plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.

{¶ 10} R.C. 2305.19 has been the subject of many appellate cases, most of which seek to balance the right of a plaintiff to litigate their case and attempts to prevent protracted litigation. To that end, in *McCullough v. Bennett*, 2024-Ohio-2783, ¶ 2, the Ohio Supreme Court noted that

> [t]he defendant in the underlying action asks us to go beyond the language of the saving statute and impose a "one-use" limitation, such that the saving statute cannot be used in this case because the plaintiff's two previous complaints had been dismissed. We decline to do so. We adhere to what the statute says.

{¶ 11} Interpreting the Ohio Supreme Court's ruling this court found that

> the Ohio Supreme Court held that Ohio's saving statute is not limited by a one-use restriction, meaning that a plaintiff may refile a claim a third time as long as the second refiling occurs prior to the expiration of the statute of limitations. *McCullough* at ¶ 17-21. The Court reasoned that complaints filed before expiration of the statute of limitations do not need to be "saved." Id.

Kohn v. Glenmede Trust Co., 2025-Ohio-1058, ¶ 26 (8th Dist.).

{¶ 12} In *Kohn* this court determined that some of the plaintiff's claims were barred by the applicable statute of limitations and by Kohn's prior use of the saving statute. In addition, we found that some of the claims in the plaintiff's third complaint were filed before the expiration of the applicable statute of limitations, the saving statute applied to those claims, and the trial court improperly dismissed them. *Id.* at ¶ 27-30. This court certified a conflict between the *Kohn* decision and *McGowan v. Family Medicine, Inc.*, 2002-Ohio-4071 (5th Dist.). This court framed the question on certification as, "Does the saving statute, R.C. 2305.19(A), apply to save a refiled 'action' as a whole or does it apply to save refiled 'claims' independently?"

{¶ 13} The Ohio Supreme Court reversed, in part, our decision in *Kohn* and further clarified its ruling in *McCullough*. The Court found:

> Nothing in the saving statute provides that it may be used only once. And nothing in the saving statute provides that it applies only when a second filing of an action occurred within the original statute-of-limitations period. Rather, once an action has been timely commenced, R.C. 2305.19(A) does not limit the number of times a new action may be commenced in accordance with the statute's terms. If an action commenced in accordance with the saving statute subsequently fails other than on the merits, R.C. 2305.19(A) permits the plaintiff to commence a new action within one year of that failure or within the original applicable statute-of-limitations period, whichever is later.

Kohn v. Glenmede Trust Co., N.A., 2026-Ohio-4001, ¶ 15.

{¶ 14} The Court further noted that

> when the saving statute permits the commencement of a new action, the expiration of the statute of limitations for a claim that was asserted in the previous action does not preclude that claim from proceeding in the new action merely because its statute of limitations period had also expired before a previous use of the saving statute. . . .

Id. at ¶ 18.

{¶ 15} The Ohio Supreme Court recognized that its ruling could lead to multiple refilings of a case, but noted that it was adhering to the plain language of R.C. 2305.19 and the trial court had other remedies to prevent "abusive refilings" under Civ.R. 41. *Id.* at ¶ 14, 17.

{¶ 16} On appeal, Brown's arguments align with the Ohio Supreme Court's ruling in *Kohn*, that she was permitted to refile her complaint because the case had been dismissed otherwise than on the merits and she refiled within a year of the dismissal. BWC acknowledged in its brief and Cleveland noted at oral argument that under binding Eighth District precedent this court must affirm the trial court's

decision, but if the Ohio Supreme Court overruled our decision in *Kohn* this court must reverse the trial court's decision. We agree.

{¶ 17} Based on the foregoing, the sole issue is whether Brown refiled her case in compliance with R.C. 2305.19, i.e., whether (1) Brown's second complaint was commenced or attempted to be commenced, (2) the second complaint was dismissed otherwise than on the merits and (3) the third complaint was commenced within one year of that failure or within the original applicable statute of limitations, whichever occurs later.

{¶ 18} Based on the record before us, Brown timely filed her initial appeal with petition and complaint. Subsequently, Brown voluntarily dismissed her complaint pursuant to Civ.R. 41(A)(1). She refiled her complaint within one year of that dismissal. The trial court dismissed the refiled complaint without prejudice, pursuant to Civ.R. 41(B)(1). Brown then refiled her complaint for a third time and within one year of that dismissal. Because the parties do not dispute that Brown met all of the requirements of the saving statute and given the Ohio Supreme Court's recent ruling, the trial court erred when it dismissed her complaint.

{¶ 19} Accordingly, Brown's assignment of error is sustained.

{¶ 20} Judgment reversed and remanded for further proceedings.

{¶ 21} It is ordered that appellant recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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EMANUELLA D. GROVES, PRESIDING JUDGE

SEAN C. GALLAGHER, J., and
TIMOTHY W. CLARY, J., CONCUR