No. 2006-2300

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. 87367

JANE DOE,
Plaintiff-Appellant,

v.

JESUS A. RAMOS, M.D., INC., et al.
Defendants-Appellants

and

PRONATIONAL INSURANCE COMPANY,
Intervenor/Defendant-Appellee

MEMORANDUM OPPOSING JURISDICTION OF INTERVENOR/DEFENDANT-APPELLEE PRONATIONAL INSURANCE COMPANY

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I. EXPLANATION OF WHY THIS IS NOT A CASE OF PUBLIC AND GREAT GENERAL INTEREST

In an attempt to create a statewide crisis where none exists, Plaintiff-Appellant Jane Doe and Defendant-Appellant Jesus Ramos, M.D. (collectively "Appellants" where appropriate) submit that the decision of the Eighth Appellate District permitting Intervenor/Defendant-Appellee ProNational Insurance Company limited intervention represents an "increasingly popular practice" that is contrary to Civ.R. 24. Appellants – previously opposing parties now aligned – contend that the importance of this issue has not escaped this Court because it accepted for review *Gehm v. Timberline Post & Frame*, 9th Dist. No. 22479, 2005-Ohio-5222 – a case that they represent involves the "proper interpretation" of Civ.R. 24. Appellants' Mem. at 1.

The issue before this Court in *Gehm*, however, does *not* involve or even address the propriety of limited intervention under Civ.R. 24 in general or the claim-or-defense requirement under Civ.R. 24(C) in particular. The issue accepted and briefed by the appellant in *Gehm* is whether an appellate court's decision dismissing an order denying intervention is a final appealable order. See *Gehm v. Timberline Post & Frame*, Ohio Supreme Court Case No. 2005-2137; see, also, *Gehm*, 108 Ohio St.3d 1434, 2006-Ohio-421 (accepting on certified conflict the issue of "[w]hether the denial of a motion for leave to intervene on behalf of an insurer for purposes of participating in discovery and submitting jury interrogatories is a final appealable order pursuant to R.C. 2505.02."); *Gehm*, 108 Ohio St.3d 1436, 2006-Ohio-421 (accepting as discretionary appeal Proposition of Law No. I only and consolidating with certified conflict appeal). Whether an order denying limited intervention in the first instance is appropriate under Civ.R. 24 is not before this Court – despite attempts by amicus curiae to argue to the contrary. Thus, to the extent that Appellants rely on this Court's acceptance of *Gehm* as support for the

Court's recognition that the within appeal is of public and great general interest, that reliance is misplaced.

Nor is this case of public or great general interest merely because a jurisdictional brief is before this Court in an appeal of *Filippi v. Ahmed*, 8th Dist. No. 86927, 2006-Ohio-4368 (Supreme Court Case No. 2006-1950). Although the issues Appellants raise here are the same as those raised in *Filippi*, no decision has yet been made by this Court as to whether it will exercise its discretion to accept *Filippi* for review. To the extent that Appellants rely on the fact that *Filippi* has been merely *appealed* to this Court as recognition that the within case is of "public and great general interest," that reliance – like that placed on *Gehm* – is misplaced.

More importantly, this case is not one of public or great general interest because the issues raised by Appellants in this appeal are premature. As this Court will note, the Eighth District – like the trial court before it – did not address the limited-intervention issue or the claim-or-defense requirement of Civ.R. 24(C). Appellant Doe raised these issues for the first time on appeal to the Eighth District. Neither Appellant raised the limited-intervention or claim-or-defense pleading issues in the trial court – and the appellate court appropriately did not address them on appeal.

Even if not premature, however, no public or great general interest is at stake. This Court has already tangentially addressed the limited-intervention issue in *Howell v. Richardson* (1989), 45 Ohio St.3d 365. In that case, this Court explicitly stated that intervention by an insurer as a defendant is appropriate to protect the insurer's interests as against its insured and failure to do so limits the insurer in any subsequent proceeding to the factual findings entered as to the insured in the earlier proceeding. It similarly addressed the issue in *State ex rel. First New Shiloh Baptist Church v. Meagher* (1998), 82 Ohio St.3d 501, when it set forth the "purpose-for-which-intervention-is-sought" factor as one of five factors in determining timeliness under Civ.R.

24(A). These two decisions by this Court have guided the trial and appellate courts in determining whether intervention for a limited purpose is appropriate. Having already provided guidance on these issues, no public or great general interest exists.

As for the claim-or-defense pleading issue raised by Appellants, they argue that ProNational has not tendered a pleading asserting a claim or defense as required under Civ.R. 24(C). That issue, too, lacks any public or great general interest because that issue plainly does not apply in this case. ProNational's intervention motion was accompanied by a proposed Answer – a pleading under Civ.R. 7(A) – and this Answer asserted affirmative defenses. Appellants' argument does not apply to the facts of this case. Instead, they are attempting to have this Court prematurely render an opinion on an issue that is important to them, but plainly does not apply to the facts of this case. How can this issue be a public or great private interest if that interest is not at stake in this appeal? It is not.

In summary, Appellants have identified no public or great general interest worthy of this Court's discretionary review. Neither this Court's acceptance of *Gehm* nor the pending acceptance of *Filippi* serve as support of any such interests. To the contrary, Appellants seek to circumvent well established appellate-review principles in inviting this Court to "accept this opportunity to address the validity of the increasingly popular practice of 'limited intervention.'" Mem. at 2. This Court, however, should decline the invitation. Neither court below addressed the issue and it would be premature for this Court to do so.

And even if the lower courts had so addressed, this Court is not an error-correcting court. *Wilson v. Brush Wellman, Inc.*, 103 Ohio St.3d 538, 541, 2004-Ohio-5847, at ¶12. Instead, a case accepted for discretionary appeal involves issues that are of public or great general interest. See Section 2(B)(2)(e), Article IV, Ohio Constitution; S.Ct.Prac.R. III(1)(B)(2). This is not such a case. No such interests are at stake. Jurisdiction should be declined.

II. COUNTERSTATEMENT OF THE CASE AND FACTS

Plaintiff-Appellant Jane Doe was a longstanding patient of Defendant-Appellant Jesus Ramos, M.D., having treated with him beginning in 1977. As early as 1985, Doe alleges that she became addicted to narcotic pain medication because of Dr. Ramos's over-prescribing practices. She further alleges that she engaged in a sex-for-drugs relationship with Dr. Ramos from 1995 to 2000 in order to feed her addiction. Dr. Ramos has admitted to having a sexual relationship with Doe and has since pleaded guilty to felony drug trafficking based on his conduct with Doe.

Intervenor/Defendant-Appellee ProNational Insurance Company ("ProNational") insured Dr. Ramos for professional liability. When Doe instituted suit against Dr. Ramos in September 2002, ProNational agreed to provide a defense for the physician under a reservation of rights – specifically reserving its rights as to coverage under the policy based on what ProNational construed to be allegations of intentional conduct contained in Doe's complaint.

And Doe proceeded to prosecute her case as if Dr. Ramos's conduct was intentional. Despite asserting a claim for professional negligence in her complaint, Doe gave every indication in her pleadings and through discovery that she was going to present this case as one of intentional misconduct by Dr. Ramos. Indeed, discovery focused on Doe's sex-for-drugs relationship with Dr. Ramos and – in addition to her claim for professional negligence – Doe asserted claims for punitive damages and for fraud. Doe even suggested during the course of proceedings that Dr. Ramos *intentionally* refused to recommend treatment for her addiction in order to sustain the relationship.

As long as Doe pursued her allegations of intentional conduct, ProNational believed its ability to pursue its coverage defenses was preserved and the parties as originally aligned protected that interest. During mediation proceedings in May 2005, however, Doe revealed *for the first time* that she would focus on Dr. Ramos's alleged negligence at trial. This strategy was

a decided shift from her previous strategy and was not based on any changes in the pleadings or discovery. ProNational suspected that Doe was seeking to maximize the available coverages from Dr. Ramos's insurance by pursuing an intentional tort action in the guise of a negligence claim. Doe confirmed ProNational's suspicions when she argued in opposition to ProNational's Motion to Intervene that she would be prejudiced if she won a verdict in her favor and then had no means to satisfy any judgment on that verdict – just as Dr. Ramos would be prejudiced if Doe won a verdict and he had no means of satisfying the judgment.

It then became apparent to ProNational that no existing party would adequately protect its interests. ProNational thereafter filed a declaratory judgment action in the United States District Court for the Northern District of Ohio in May 2005, asking the court to declare ProNational's coverage obligations to Dr. Ramos. *ProNational Ins. Co. v. Ramos* (N.D.Ohio 2005), Case No. 1:05 CV 1240. Dr. Ramos moved for dismissal, premising his motion on the futility of a declaratory judgment action without factual determinations that necessarily would have to be made in the *Doe v. Ramos* case – determinations the physician proposed be litigated in that action. The district court agreed. In July 2005, it dismissed without prejudice the declaratory judgment action pending factual determinations to be made in the *Doe v. Ramos* action.

It was shortly after the dismissal of the declaratory judgment action – and approximately five months before the scheduled trial date – that ProNational moved to intervene in this case. A proposed Answer accompanied the Motion, as is required by Civ.R. 24(C). ProNational sought intervention limited to submitting jury interrogatories at trial – interrogatories that neither Doe nor Dr. Ramos would likely submit because they would be against their respective interests. Both Doe and Dr. Ramos opposed the motion, arguing only that the motion was untimely under

Civ.R. 24. The trial court denied the motion on that basis. See 10/26/05 J. Entry, attached as Apx. 1.[1]

ProNational appealed to the Eighth Appellate District. In opposition, Doe argued that ProNational's intervention motion not only was untimely, but she also argued – for the first time on appeal – that limited intervention was not authorized under Civ.R. 24 and that ProNational did not comply with the claim-or-defense pleading requirement of Civ.R. 24(C) when it failed to attach a pleading to its motion. Notwithstanding the inaccuracy of this argument – ProNational's intervention motion was accompanied by a proposed Answer, which is a "pleading" under Civ.R. 7(A) – these arguments, as noted by ProNational in its appellate Reply Brief, were not raised or addressed in the trial court.

The Eighth Appellate District similarly – and appropriately – did not address Doe's limited-intervention or claim-or-defense arguments. Instead, in a split decision, the appellate majority found that the trial court abused its discretion in finding the intervention motion untimely and reversed. Contrary to Appellants' assertion that the Eighth Appellate District merely followed *Crittenden Court Apt. Assoc. v. Jacobson/Reliance*, 8th Dist. Nos. 85395 & 85452, 2005-Ohio-1993, the appellate majority carefully analyzed each factor of the five-factor test for timeliness set forth by this Court in *State ex rel. First New Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, 503. More importantly, the majority recognized that even if ProNational were to institute a separate declaratory judgment action as to coverage, that action would be ineffective "because the legal basis for a verdict in favor of Doe could be determined only by submitting interrogatories to the jury in the instant case." See 10/30/06 J. Entry/Op., at

[1] Although Appellants attached the judgment and opinion of the Eighth Appellate District to their jurisdictional brief, they did not attach the judgment of the trial court. Under S.Ct.Prac.R. III(1)(D), ProNational hereby submits the trial court's judgment because it is relevant to this appeal.

8. It thereafter opined that judicial economy is best served if all interested parties are joined in one lawsuit. Id.

Doe and Dr. Ramos jointly appealed to this Court. Their very alignment for purposes of this appeal underscores the need for intervention in this case.

III. ARGUMENT

Proposition of Law

> **Civ.R. 24(C) requires an intervening party to assert a legally recognized "claim or defense" in the proceedings and does not permit "limited intervention" for purposes of submitting interrogatories to the jury.**

A. Review of the issues raised in this appeal is premature.

Both Appellants' opposition to ProNational's Motion to Intervene was limited to the issue of timeliness under Civ.R. 24(A). At no time during the briefing in the trial court did Doe or Dr. Ramos argue that intervention was inappropriate because ProNational did not comply with the claim-or-defense pleading requirement of Civ.R. 24(C) or that limited intervention was not authorized under Civ.R. 24 – the very same issues that are raised by the Proposition of Law proposed in this appeal. Indeed, the trial court's decision was based on, and limited to, the lack of timeliness. (Apx. 1). It was not until Doe filed her responsive brief in the Eighth Appellate District that the issues of lack of compliance with the claim-or-defense requirement of Civ.R. 24(C) and the propriety of limited intervention were raised. ProNational noted this in its appellate Reply Brief. More importantly – as this Court will most certainly observe – the Eighth District appropriately did not address these issues, confining its opinion instead to the issue of timeliness.

It is well established that this Court's review is limited to issues considered or decided by the court of appeals. *Thirty-Four Corp. v. Sixty-Seven Corp.* (1984), 15 Ohio St.3d 350, 352.

Had Appellants raised the issues in the trial court and asserted a cross-assignment of error under R.C. 2505.22, the issues may have been properly reviewed for discretionary-appeal purposes. They did not pursue this course, however, and to ask this Court to review an issue not addressed by the appellate court would be premature at this juncture.

B. Even if not premature, limited intervention is proper.

1. This Court's decisions in *Howell* and *First Shiloh* implicitly authorize limited intervention.

Decided in 1989, this Court in *Howell v. Richardson*, 45 Ohio St.3d 365, held that an insurer may be collaterally estopped from re-litigating issues of liability and damages that were determined in a prior proceeding against the insured-tortfeasor unless the insurer intervened in the prior proceedings. Id. at paragraph one of the syllabus. By requiring an insurance company to "seize the opportunity to intervene" or be forever foreclosed from litigating any factual determinations in any other proceeding, an insurer may "enter an action and participate as a third-party defendant so as to defeat any liability its part." But seized or not, "the opportunity to litigate in the original action will preclude re-litigation of liability" in any other proceeding. Id at 367-368.

An insurer may sufficiently "defeat liability on its part" by simply submitting jury interrogatories. Appellate courts have recognized this course of action and have relied on the language from *Howell* to support limited intervention – explicitly acknowledging that neither a plaintiff nor an insured-defendant-tortfeasor has a comparable interest in submitting jury interrogatories that could defeat coverage. See *Alhamid v. Great Am. Ins. Cos.*, 7th Dist. No. 02-CA-114, 2003-Ohio-4740, at ¶20-21; *Sabbato v. Hardy* (July 23, 2001), 5th Dist. No. 2001CA00045, 2001 WL 842021, at *2; see, also, *Filippi v. Ahmed*, 8th Dist. No. 86927, 2006-Ohio-4368; *Crittenden Court Apt. Assn. v. Jacobson/Reliance*, 8th Dist. Nos. 85395 & 85452,

2005-Ohio-1993; *Tomcany v. Range Constr.*, 11th Dist. No. 2003-L-071, 2004-Ohio-5314; *Walsh v. Patitucci* (Nov. 2, 2000), 8th Dist. No. 77969, 2000 WL 1643842; *Schmidlin v. D & V Ent.* (June 1, 2000), 8th Dist. No. 76287, 2000 WL 709039.

Although these appellate courts have correctly relied on *Howell* as supporting limited intervention, this Court's decision in *State ex rel. First Shiloh Baptist Church v. Meagher*, 82 Ohio St.3d 501, similarly supports limited intervention. Establishing a five-factor test for determining the timeliness of a motion to intervene under Civ.R. 24(A), this Court held that "the purpose for which intervention is sought" is one such factor. Id. at 503. Although "purpose" could be construed as related to the interests to be protected, it equally can be, and has been, construed as to *how* the intervenor proposes to protect any identified interest. In this regard, appellate courts have noted with approval that when an insurer seeks intervention for the sole *purpose* of submitting jury interrogatories, the insurer has satisfied the purpose-timeliness factor under *First Shiloh*. See *Crittenden*, 2005-Ohio-1993, at ¶20; *Tomcany*, 2004-Ohio-5314, at ¶45; *Schmidlin*, 8th Dist. No. 76287, 2000 WL 709039, at *4.

2. Appellants misconstrue *Howell*.

Appellants argue that *Howell* stands for the proposition that an insurer must decline to defend its insured and then, and only then, can the insurer intervene to assert a *claim* in declaratory judgment. Mem. at 11. *Howell* stands for no such proposition, nor can such a proposition be reasonably inferred from the text of that case.

Contrary to Appellants' argument, nothing in *Howell* states that the insurer in that case refused to either indemnify or defend the insured.[2] Although that may be true, the text of *Howell*

[2] Appellants misstate the facts of *Alhamid* when they state that the insurer in that case refused to defend its insured. Although the insurer in *Alhamid* refused to provide a defense in an action between an injured plaintiff and the insured, the trial court determined in a separate declaratory judgment action that the insurer had a duty to defend the injury action. It was after this

makes no such explicit statement. Nor does *Howell* require an insurer to decline a defense. On the other hand, this Court stated that an insurer "*may* legitimately decline to defend *** ." 45 Ohio St.3d at 367. (Emphasis added.) Equally discretionary is an insurer's decision to intervene. Id. What is mandatory, however, is the preclusive effect of re-litigating factual determinations made in the original action if the insurer chooses *not* to intervene. Id. at 367-368.

Appellants' interpretation of *Howell* does not comport with a plain reading of Civ.R. 24. Put simply, Civ.R. 24 authorizes intervention as a matter of right when the proposed intervenor (1) has a protectable interest relating to the transaction; (2) has made a timely application; (3) is in a position that the disposition of the action may impair or impede the proposed intervenor's interest; and (4) is inadequately represented by the existing parties to the lawsuit. Civ.R. 24(A); see, also, *Myers v. Basobas* (1998), 129 Ohio App.3d 692, 696; *Blackburn v. Hamoudi* (1986), 29 Ohio App.3d 350, 352. Nothing in the Rule's requirements – or in *Howell* – requires a non-party insurer to decline a defense to its insured before the insurer can seek intervention under this Rule.

Nor does Civ.R. 24 or *Howell* require an insurer to bring a declaratory-judgment action as the form of intervention. *Howell* merely states that the insurer "may enter the action." Id. *Howell*, 45 Ohio St.3d at 367. This Court did not mandate that the insurer enter the action only by way of declaratory judgment. Indeed, several appellate courts have recognized that a declaratory-judgment action *before* factual determinations are made as between the plaintiff and tortfeasor-insured would be ineffective because the very factual determinations needed to determine coverage have not yet been made – and indeed could only be made in the action between the plaintiff and tortfeasor-insured. See *Crittenden Court*, 2005-Ohio-1993, at ¶24;

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determination that the insurer sought to intervene in the injury action against the insured – and it was this action to which the insurer provided a defense. *Alhamid*. 2003-Ohio-4740, at ¶4-5.

Tomcany, 2004-Ohio-5314, at ¶35; *Schmidlin*, 2000 WL 709039, at *5. Thus, not only is Appellants' argument unsupported by Civ.R. 24 or *Howell* – it is impractical and ineffective.

What *Howell* does contemplate is that an insurer will intervene as a defendant. 45 Ohio St.3d at 367. As a defendant, the insurer can assert appropriate defenses to defeat liability through an answer to the plaintiff's complaint – as ProNational did in this case.

3. Limited intervention is not "stealth intervention."

Appellants would have this Court believe that an insurer's request for limited intervention is "stealth intervention."[3] Attempting to conjure diabolical images of power and strength, limited intervention is neither. It merely seeks to protect an interest in an efficient and cost-effective manner – an interest that neither the plaintiff nor tortfeasor-defendant would be inclined to protect. As has been recognized by court after court, a plaintiff and the insured-defendant/tortfeasor have "a common interest in obtaining a general verdict untested by interrogatories, because that would presumably maximize the insurance coverage owed ***." *Schmidlin*, 2000 WL 709039, at *5; see, also, *Filippi*, 2006-Ohio-4368, at ¶9, 14; *Crittenden Court*, 2005-Ohio-1993, at ¶24; *Tomcany*, 2004-Ohio-5314, at 34. Indeed, Appellant Doe – in arguing in the trial court that ProNational's intervention-motion was untimely under the "purpose" factor of *First Shiloh* – has admitted as much in opposing intervention.

> To allow ProNational at the last hour to intervene and in the manner requested, would profoundly jeopardize the rights of [Doe] and [Dr. Ramos]. *** [Doe] would also be prejudiced if she won a verdict and there was no means to satisfy the judgment. [Dr. Ramos's] rights would be jeopardized if [Doe] won a jury verdict because he would have no means of paying the judgment.

[3] "Stealth intervention" is a misnomer inaccurately ascribed to dissenting Judge Porter in *Schmidlin*. In actuality, Judge Porter was referring to a stealth *insurer*, not stealth *intervention*. *Schmidlin*, 2000 WL 709039, at 8 (Porter, J., dissenting).

Which party is exercising "stealth" tactics here? Certainly not an insurer, who – agreeing to provide a defense for its insured under a reservation of rights – seeks only to have *all* the facts determined by the jury.

4. Limited intervention does not present a trial dilemma, nor does it invite piecemeal litigation.

Appellants attempt to create a conflict where no conflict exists. They argue that a defense attorney retained by the insurer "will have little incentive to try to convince the jurors to answer interrogatories so as to allow coverage to be maintained." That is not the defense attorney's role. On the contrary, a defense attorney defends *against* liability in the first instance. If liability is established – on whatever basis – the defense attorney's role then shifts to ensuring that the damages awarded comport with the facts and law. *Coverage* is never an issue. And it is for that reason that evidentiary rules prohibit reference to the existence of insurance coverage during the course of a trial before a jury. Although a plaintiff certainly seeks to obtain a judgment that can later be satisfied, its role, too, should be directed to sustaining the burden of proof *as to liability* (and damages) without regard to coverage.

No trial dilemma is present when an insurer is limited to intervening for the purpose of submitting jury interrogatories that address whether an insured's conduct was intentional or merely negligent. In this form of limited intervention, the insurer does not offer any witnesses, nor does it participate in cross-examination. But, in submitting jury interrogatories as to the nature of its insured's conduct, the insurer can protect an interest it would later be foreclosed from protecting under *Howell*.

Intervention in this limited manner is efficient. It is cost-effective. It most certainly *does not* invite piecemeal litigation. Instead, "[p]ermitting narrow intervention *** [is] the only

practical means to allow all legal claims to be decided efficiently and consistently in one proceeding." *Crittenden Court*, 2005-Ohio-1993, at ¶25.

C. ProNational complied with the pleading requirement of Civ.R. 24(C).

Having satisfied that the Ohio Supreme Court envisions limited intervention under Civ.R. 24 in certain circumstances, an intervening party must still satisfy the technical requirements of Civ.R. 24(C). Although Appellants argue that ProNational failed to comply with this subdivision – an untrue statement – Appellants attempt to advance a more global attack on language in *Crittenden Court* that states that the failure to comply with the pleading requirement is not fatal to the right to intervene (see 2005-Ohio-1993, at ¶14). Mem. at 7-8. The appellate court's decision in *Crittenden Court*, however, is not under review in this appeal.

Indeed, the pleading requirement is not even at issue in this case because ProNational complied with Civ.R.24(C), which provides that a motion made under this Rule "shall be accompanied by a pleading, as defined in Civ.R. 7(A), setting forth the claim or defense for which intervention is sought." An answer is a "pleading" under Civ.R. 7(A) – and an Answer, which asserted affirmative defenses, plainly accompanied ProNational's motion to intervene.

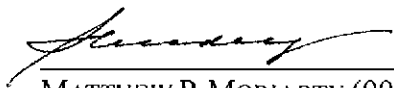
As a pleading under this Rule, it is of no consequence that ProNational represented to the trial court that it would not be asserting any substantive claims. Mem. at 6. ProNational did not assert any claims – it asserted defenses. Appellants nonetheless argue that there can be no defenses asserted if there are no claims against the intervening party. But Civ.R. 24(C) is not so one-sided. The very provision that Appellants argue prevents ProNational from intervening plainly states that the intervening party can assert a *defense*. Defenses are asserted by way of an answer. And ProNational's proposed pleading asserted a defense to liability under the facts of this case.

Appellants' argument to the contrary notwithstanding, it is apparent that ProNational complied with the terms of Civ.R. 24(C). Consequently, Appellants can garner no support from *Barnes v. Univ. Hosp. of Cleveland*, 8th Dist. Case Nos. 87247, 87285, 87710, 87903, & 87946, 2006-Ohio-6266, wherein the appellate court upheld the trial court's decision denying intervention, in part, because no pleading accompanied the motion to intervene. Id. at ¶52. The same is true of the other cases cited by Appellants at page 7 of their Memorandum – all of which are cases where the respective courts denied intervention, at least in part, because the motion to intervene was unaccompanied by a pleading.

IV. CONCLUSION

The issues raised by Appellants Jane Doe and Jesus A. Ramos, M.D., are prematurely before this Court because they were not addressed by the appellate or trial courts. Even if they had been addressed, the judgment of the Eighth Appellate District comports with, or is an extension of, the law of intervention as pronounced by this Court in *Howell v. Richardson* and *State ex rel. First Shiloh Baptist Church v. Meagher*. Thus, there is no public or great general interest that is at stake in this appeal and this Court should decline discretionary review.

Respectfully submitted,



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CERTIFICATE OF SERVICE

A copy of the foregoing has been served this 15th day of January, 2007, by U.S. Mail, postage prepaid, upon the following:

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Appendix

36233543

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

JANE DOE, ET AL
Plaintiff

J. A. RAMOS, M.D., INC., ET AL
Defendant

Case No: CV-02-481923

Judge: LILLIAN J GREENE

JOURNAL ENTRY

DEFENDANT(S) SOUTHWEST COMMUNITY HEALTH CARE SYSTEM(D3) and SOUTHWEST COMMUNITY HEALTH CARE SYSTEM(D4) MTN FOR SUMMARY JUDGMENT OF DEFTS SOUTHWEST COMMUNITY HEALTH CARE SYSTEM DBA SOUTHWEST GENERAL HEALTH CENTER AND SOUTHWEST COMMUNITY HEALTH CARE SYSTEM DBA SOUTHWEST IRGICARE - STRONGSVILLE INSTANTER KATE EDITH RYAN 0068248, FILED 05/11/2005, IS DENIED.
DEFENDANT(S) J A RAMOS MD INC(D1) and JESUS A RAMOS(D2) MOTION FOR 35 MEMTAL EXAMINATION OF PLTF.....FILED GREGORY T ROSSI 0047595, FILED 08/17/2005, IS GRANTED..
D3 SOUTHWEST COMMUNITY HEALTH CARE SYSTEM MOTION FOR RULE 35 EXAM JEFFREY W VAN WAGNER 0021913, FILED 08/19/2005, IS GRANTED. PLAINTIFFS COUNSEL MAY BE PRESENT DURING ANY EXAMINATION OF PLAINTIFF BUT MAY NOT INTERFERE WITH THE PROCEDURE NOR LIMIT THE SCOPE OF THE EXAMINATION. NO ADDITIONAL RESTRICTIONS SHALL APPLY.
INTERVENOR-DEFT PRONATIONAL INSURANCE COMPANY'S MOTION FOR LIMITED INTERVENTION..... MATTHEW P MORIARTY (0028389), FILED 09/01/2005, IS DENIED AS UNTIMELY.
INTERVENOR DEFT., PRONATIONAL CO.'S MOTION FOR SUBSTITUTION OF REPLY BRIEF, NUNC PRO TUNC, & TO STRIKE PREVIIOUSLY FILED BRIEF..... MATTHEW P MORIARTY (0028389), FILED 10/21/2005, IS GRANTED.

Judge Signature Date

RECEIVED FOR FILING
OCT 26 2005
GERALD E. FUERST, CLERK
By Deputy

10/25/2005 VOL3429 PG0878