No. 2013-2007

In the Supreme Court of Ohio

APPEAL FROM THE COURT OF APPEALS
EIGHTH APPELLATE DISTRICT
CUYAHOGA COUNTY, OHIO
CASE NO. CA 13 99363

ISABELLE H. BROWN,
EXECUTOR OF THE ESTATE OF WILLIE BROWN, DECEASED,

Plaintiff-Appellant,

v.

SOLON POINTE AT EMERALD RIDGE, LLC, ET AL.,

Defendants-Appellees.

APPELLEES UNIVERSITY HOSPITALS HEALTH SYSTEM, INC. AND UH REGIONAL HOSPITALS D/B/A UNIVERSITY HOSPITALS BEDFORD MEDICAL CENTER'S MEMORANDUM OPPOSING JURISDICTION

Richard L. Dempsey
RICHARD L. DEMPSEY CO., L.P.A.
U.S. Bank Centre
1350 Euclid Ave., Suite 1550
Cleveland, OH 44115
Telephone: 216.263.7900
Facsimile: 216.263.7901
rdemsey@demseylaw.com

Attorneys for Plaintiff-Appellant Isabelle H. Brown, Executor of the Estate of Willie Brown

Susan M. Audey (0062818)
(COUNSEL OF RECORD)
Rita A. Maimbourg (0013161)
Jane F. Warner (0074957)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113-7213
Telephone: 216.592.5000
Facsimile: 216.592.5009
susan.audey@tuckerellis.com
rita.maimbourg@tuckerellis.com
jane.warner@tuckerellis.com

Attorneys for Defendants-Appellees University Hospitals Health System, Inc. and UH Regional Hospitals d/b/a University Hospitals Bedford Medical Center

Martin T. Galvin (0063624)
(COUNSEL OF RECORD)
Marilena DiSilvio (0064575)
David A. Valent (0084061)
REMINGER CO., L.P.A.
1400 Midland Bldg.
101 Prospect Ave., West
Cleveland, OH 44115-1093
Telephone: 216.687.1311
Facsimile: 216.687.1841
mgalvin@reminger.com
mdisilvio@reminger.com
divalent@reminger.com

Attorneys for Defendant-Appellee Solon Pointe at Emerald Ridge, LLC

Brian D. Sullivan (0063536)
(COUNSEL OF RECORD)
Rafael P. McLaughlin (0083017)
REMINGER CO., L.P.A.
1400 Midland Bldg.
101 Prospect Ave., West
Cleveland, OH 44115-1093
Telephone: 216.687.1311
Facsimile: 216.687.1841
bsullivan@reminger.com
rmclaughlin@reminger.com

Attorneys for Defendants-Appellees Harborside Healthcare Corporation and Harborside of Cleveland Limited Partnership d/b/a Park East Care and Rehabilitation Center

Thomas A. Prislipsky (0067623)
REMINGER CO., L.P.A.
11 Federal Plaza Central, Suite 300
Youngstown, OH 44503
Telephone: 330.744.1311
Facsimile: 330.744-7500
tprislipsky@reminger.com

Attorney for Defendants-Appellees Harborside Healthcare Corporation and Harborside of Cleveland Limited Partnership d/b/a Park East Care and Rehabilitation Center

TABLE OF CONTENTS

Page

I. This case does not involve an issue of public and great general interest.

There is no public or great general interest in a court's routine application of well-established law to facts. Yet Appellant Isabelle Brown asks the Court to find that the trial court—and the appellate court on review—erred when it failed to find that she demonstrated good cause for an extension of time to secure an affidavit of merit in a thrice-filed, twice-refiled case. Although she claims that this Court needs to "clarify" the standard for good cause under Civ.R. 10(D)(2), no such clarity is necessary. The rule provides considerable direction and discretion in determining what constitutes good cause, trial courts have applied the rule without difficulty, and appellate court have consistently applied the abuse-of-discretion standard and upheld the exercise of discretion afforded trial judges in making good-cause determinations where appropriate. There is nothing for this Court to clarify.

Nor is there anything confusing about how courts apply the savings statute as Brown argues. This Court has made clear that the savings statute can be used only once to refile a case and when used more than once—as it was here—the twice-refiled complaint is subject to dismissal if the claims asserted are time barred, as they were here. *See Thomas v. Freeman*, 79 Ohio St.3d 221, 227 (1997). Lower courts have followed this well-established authority without confusion or need for further direction from this Court. *See, e.g., Wright v. Proctor-Donald*, 5th Dist. No. 2012-CA-00154, 2013-Ohio-1973, *appeal not accepted*, 136 Ohio St.3d 1511, 2013-Ohio-4657, ¶ 13, 16, 21 (relying on *Thomas* and finding that plain language of the savings statute "is not limited to circumstances in which the original statute of limitations has expired," and thereafter concluding plaintiff's second refiled complaint

was barred); *see also Hall v. Northside Med. Ctr. & Internal Medicine-Surgical Ctr.*, 178 Ohio App.3d 279, 2008-Ohio-4725, ¶ 36 (7th Dist.) (also relying on *Thomas*); *Dargart v. Ohio Dept. of Transp.*, 171 Ohio App.3d 439, 2006-Ohio-6179, ¶ 21 (6th Dist.) (same); *Carlson v. Tippett*, 122 Ohio App.3d 489, 491 (11th Dist. 1997) (same); *Hamrick v. Ramalia*, 8th Dist. No. 97385, 2012-Ohio-1953, ¶ 19 (same); *Rall v. Arora*, 3d Dist. No. 9-12-56, 2013-Ohio-1392, ¶ 19 (same); *Bartlett v. Redford*, 8th Dist. No. 97606, 2012-Ohio-2775, ¶ 15 (same); *Gao v. Barrett*, 10th Dist. No. 10AP-1075, 2011-Ohio-3929, ¶ 13 (same), among others.

No public or great general interest is at stake. The trial court and the Eighth Appellate District on review merely applied well-established law to the facts of this case. That Brown believes that the courts below erred is insufficient to invoke this Court's discretionary review. Jurisdiction should be declined.

II. Counterstatement of the case and facts

A. *Brown I*, Case No. CV-10-721717, is filed and dismissed.

In March 2010, Appellant Isabelle Brown, as executor of the estate of Willie Brown, filed a three-count complaint against several defendants, including Appellee University Hospitals Health System, Inc. and one of its regional hospitals doing business as University Hospitals Bedford Medical Center (collectively University Hospitals). She also asserted claims against Sunrise Healthcare Corporation, Solon Pointe at Emerald Ridge, Harborside Healthcare Corporation, and Harborside of Cleveland Limited Partnership d/b/a Park East Care and Rehabilitation Center.

Brown contemporaneously moved for an extension of time to file the affidavit of merit required by Civ.R. 10(D)(2). In that motion, Brown claimed she had "good cause" for

a 120-day extension of time so she could "secure complete records" and provide the required affidavit. The court granted the motion and gave Brown until July 19, 2010 to file her affidavit.

The trial court extended this date two more times at Brown's request. The first extension extended compliance until August 16, 2010, while the second extended it until September 27, 2010. The court specifically warned Brown that failure to file the affidavit of merit by September 27 could result in dismissal of her case.

Despite three extensions of time totaling 192 days, Brown failed to submit the affidavit by September 27 and, as the court forewarned, it dismissed Brown's complaint in its entirety. *See Brown v. Solon Pointe at Emerald Ridge*, 8th Dist. No. 99363, 2013-Ohio-4903, ¶ 2.

B. *Brown II*, Case No. CV-11-751352, is refiled and dismissed.

In March 2011, Brown refiled the same complaint against the same parties. Like *Brown I*, she again contemporaneously filed a motion for extension of time to submit an affidavit of merit. *Id.* at ¶ 3. She claimed good cause existed because she did not use up the entire year under the savings statute and instead refiled her action "early," which she argued entitled her to another 120-day extension.

University Hospitals opposed the motion for extension and simultaneously moved to dismiss. Solon Pointe and the Harborside defendants did the same. University Hospitals argued that Brown failed to demonstrate good cause as required by Civ.R. 10(D)(2)(b), noting that Brown had a complete set of medical records since July 2010, made no showing

of the efforts she made to secure an affidavit, and, despite the additional time between the dismissal of *Brown I* and the filing of *Brown II*, still had not submitted an affidavit of merit.

The trial court agreed. Exercising its considerable discretion, it denied the motion for extension of time and thereafter dismissed Brown's refiled complaint in its entirety and without prejudice under *Fletcher v. University Hosp. of Cleveland*, 120 Ohio St.3d 167, 2008-Ohio-5379. *See Brown*, 8th Dist. No. 99363, 2013-Ohio-4903, ¶ 3. Indeed, Brown made no effort to secure an affidavit of merit between the filing of *Brown II* and its dismissal approximately two months later—an additional period of almost 60 days within which she had to obtain the necessary affidavit.

C. *Brown III*, Case No. CV-12-782380, is refiled again and dismissed.

Even though she had used the savings statute once already, Brown again filed her complaint—for the third time—in May 2012. The same claims were asserted against University Hospitals, Solon Pointe, and the Harborside defendants, and like *Brown I* and *Brown II*, Brown again requested additional time—at least 90 days—to submit an affidavit of merit. *Id.* at ¶ 3.

University Hospitals again opposed Brown's motion for extension and again moved to dismiss. Solon Pointe and the Harborside defendants did the same. The trial court converted the motions to motions for summary judgment and set a supplemental briefing schedule. The defendants filed their respective motions as permitted. They argued that, because the respective savings statutes could be used only once under Ohio law, Brown's claims were time barred, and even if not, Brown failed to demonstrate good cause for yet another extension of time to submit an affidavit of merit. *Id.* at ¶ 4-5. By this time, more

than two years had passed since Brown had filed her original complaint and still she had no affidavit of merit.

The trial court ultimately granted the motions for summary judgment, denied her extension motion as moot, and dismissed Brown's complaint in its entirety. *Id.* at ¶ 5.

D. The Eighth Appellate District affirms.

Brown presented two assignments of error on appeal to the Eighth District. First, that the trial court abused its discretion in *Brown II* when it denied her request for an extension of time to obtain an affidavit of merit and in thereafter dismissing her complaint. Second, that the trial court abused its discretion in *Brown III* when it denied her request for a similar extension of time and thereafter granting summary judgment. *See Brown*, 8th Dist. No. 99363, 2013-Ohio-4903, ¶ 6.

The appellate court overruled both assigned errors and affirmed. It found Brown's challenge to *Brown II* untimely and that, in any event, Brown "failed * * * to state what further necessary information was needed in order to obtain the affidavit of merit" sufficient to justify good cause for an extension of time. *Id.* at ¶ 7-9, 14. It then, relying on well-established precedent from this Court, found that because the savings statute could be used only once and Brown had already done so in *Brown II*, the claims asserted in *Brown III* were time-barred and that summary judgment had been appropriate. *Id.* at ¶ 23-24. This appeal followed.

III. Argument

A. Counterproposition of Law No. 1

> A trial court does not abuse its discretion in finding that no good cause exists for granting an extension of time to secure an affidavit of merit under Civ.R. 10(D)(2) when the plaintiff fails to comply with the rule's good-cause requirements and several extensions have already been given and disregarded.

The analysis for determining good cause under Civ.R. 10(D)(2)(c) is well settled and undertaken without confusion by lower courts. The rule requires a trial court to consider several factors in determining whether a plaintiff has demonstrated good cause for an extension of time to submit an affidavit of merit. These include:

i. Whether the plaintiff provided a description of the information necessary to obtain an affidavit of merit;

ii. Whether the plaintiff informed the court that this information is in the possession or control of any defendant or third party;

iii. Whether the plaintiff described the scope and type of discovery that may be necessary to obtain this information;

iv. Whether the plaintiff described the efforts, if any, that were taken to obtain the information; and

v. Whether the plaintiff provided any other facts or circumstances relevant to the plaintiff's ability to obtain an affidavit of merit.

Civ.R. 10(D)(2)(c)(i)-(v).

1. Ohio courts apply the analysis for good cause without confusion and their conclusion is entitled to deference.

A trial court's ultimate conclusion after considering the Civ.R. 10(D)(2)(c) factors is entitled to considerable discretion and deference by a reviewing court. In *Johnson v. Univ. Hosp. Case Med. Ctr.*, 8th Dist. No. 90960, 2009-Ohio-2119, for example, the plaintiff failed to provide any information from which the court could consider the good-cause factors

under Civ.R. 10(D)(2)(c). Like here, there was no information about what efforts plaintiff made toward securing an affidavit of merit or why she could not comply. And again like here, the plaintiff made statements wholly unresponsive to any good-cause factor that would show why she could not comply with the affidavit-of-merit requirement. *Id.* at ¶ 15. On that record, the appellate court found no abuse of discretion and affirmed the decision denying plaintiff's motion for extension of time. *Id.* at ¶ 16.

A reviewing court deferred again in *Beegle v. South Point Hospital.* In that case, the plaintiff sought, and was granted, a 30-day extension of time to submit an affidavit of merit in a refiled action. When the plaintiff sought a second 30-day extension, the court—specifically noting it was a refiled case—refused, reasoning that plaintiff had sufficient time to obtain an affidavit of merit and failed to do so. *Beegle*, 8th Dist. No. 96017, 2011-Ohio-3591, ¶ 2-3. Emphasizing the deferential standard of review, the reviewing court said that even though it may have decided differently, "this is not enough to warrant reversal of the judgment for an abuse of discretion." *Id.* at ¶ 15. Instead, the trial court's judgment must be "unreasonable, arbitrary, or unconscionable" to satisfy that standard. Finding nothing unreasonable, arbitrary, or unconscionable about the trial court's judgment, the court affirmed. *Id.* at ¶ 22.

Other courts have similarly deferred. *See Schulte v. Wilkey*, 12th Dist. No. CA2010-02-035, 2010-Ohio-5668, ¶ 31 (alternatively finding no abuse of discretion in denying a plaintiff's motion for extension of time to submit an affidavit of merit noting that plaintiff "had ample time to comply with [Rule 10(D)(2)] when he re-filed his medical malpractice complaint"); *Adams v. Kurz*, 10th Dist. No. 09AP-1081, 2010-Ohio-2776, ¶ 36 (finding no

abuse of discretion in a re-filed action where plaintiff "did not describe for the court what efforts she had undertaken to obtain the information but instead revealed a repeated inability to comply with the affidavit of merit requirement from the time she first filed her complaint").

2. Ohio courts have consistently looked to the procedural history of a case in making good-cause determinations.

In reaching their no-good-cause determinations, the courts in *Beegle*, *Schulte*, and *Adams* freely considered that each case involved a refiled action. Yet Brown here—relying on *Chapman v. South Pointe Hosp.*, 186 Ohio App.3d 430, 2010-Ohio-152 (8th Dist.), and *Jarina v. Fairview Hosp.*, 8th Dist. No. 91468, 2008-Ohio-6846—would have this Court believe that the multiple extensions of time she was granted in *Brown I* should be disregarded because that case was involuntarily dismissed and thus a "nullity."

But Brown's reliance on *Chapman* and *Jarina* is misplaced. Both cases had nothing to do with making a no-good-cause determination as part of a motion for extension of time and had everything to do with construing Civ.R. 10(D)(2)(e)—how a court resolves a challenge to a defective, but submitted, affidavit of merit. In each case, the plaintiff submitted an affidavit of merit that did not satisfy Civ.R. 10(D)(2)(a). *Chapman*, 2010-Ohio-152, ¶¶ 6, 17; *Jarina*, 2008-Ohio-6846, ¶ 8. In each case, the defendants filed dispositive motions because of the defective affidavit. *Id.* Because the *Chapman* and *Jarina* courts were not asked to determine if good cause existed for an extension of time, neither Civ.R. 10(D)(2)(b) nor Civ.R. 10(D)(2)(c) were implicated; instead, subsection (2)(e) governing defective affidavits was at issue. Construed under that subsection, both courts found dismissal inappropriate because the respective trial courts should have granted each

plaintiff "a reasonable time, not to exceed sixty days, to file an affidavit of merit intended to cure the defect" as specifically required by Civ.R. 10(D)(2)(e). *Jarina*, 2008-Ohio-6846, ¶¶ 27-28; *see also Chapman*, 2010-Ohio-152, ¶ 28.

In was within the context of construing subsection (2)(e)—not subsections (2)(b) and (c)—that the *Chapman* court said it was inappropriate to look to the originally filed action because the defective affidavit submitted in the refiled action was at issue, not the absence of an affidavit in the originally filed action. *Chapman*, 2010-Ohio-152, ¶ 26. The *Jarina* court likewise construed Civ.R. 10(D)(2)(e) because the affidavit of merit submitted was "insufficient or defective." *Jarina*, 2008-Ohio-6846, ¶¶ 25-18. In contrast, *Johnson, Beegle, Schulte,* and *Adams* each involved motions for extension of time under Civ.R. 10(D)(2)(b), each looked at time between the originally filed action and refiled action, and each reviewing court found no abuse of discretion for doing so. A court, therefore, does not abuse its discretion by looking to the procedural history of the case when making a good-cause determination in resolving a motion for extension of time under this rule.

Nor does filing "early" constitutes good cause under the catch-all "any other facts or circumstances" provision of Civ.R. 10(D)(2)(c)(v). This provision is fundamentally tied to those facts or circumstances "relevant to the *ability* of the plaintiff to obtain an affidavit of merit." (Emphasis added.) Civ.R. 10(D)(2)(c)(v). Here, Brown had the medical records in her possession for several months at the time when she moved yet again for another extension of time. That she refiled her action before the one-year savings statute expired is not relevant to her *ability* to obtain an affidavit of merit because she provided no facts or circumstances documenting any *inability* to obtain that affidavit or that she was otherwise

unable to do so. Instead, she merely argued that she was entitled to a full year to review the records under the savings statute. But Brown is the master of her complaint and chose the timing of its filing. Because that timing decision has no bearing on her ability or inability to obtain an affidavit of merit, it does not satisfy good cause even under Civ.R. 10(D)(2)(c)(v)'s catch-all provision.

At bottom, the abuse-of-discretion standard "is a high standard to satisfy" and, as a discretionary standard, a trial court's judgment is subject to considerable deference. *Beegle*, 2011-Ohio-3591, ¶ 15. Appellate courts have had no difficulty applying this standard and affirming when appropriate as the court did here, just as they have had no difficulty in reversing when appropriate. Because there is no need to clarify a well-established analysis under a highly deferential standard of review, there is no reason to disturb the trial court's exercise of discretion in this case that would warrant review by this Court.

B. Counterproposition of Law No. 2

> The savings statute can be used only once to refile a case. (*Thomas v. Freeman*, 79 Ohio St.3d 221, 680 N.E.2d 996 (1997), followed.)

There is nothing unsettled or confusing about Ohio's savings-statute jurisprudence. Indeed, this Court has made clear that the savings statute can only be used *once* to refile a case. *See Thomas v. Freeman*, 79 Ohio St.3d 221, 227 (1997) (noting that "the savings statute can be used only once to refile a case" and that appellant "could not have refiled under the savings statute a second time").

Indeed, appellate courts across the state have followed *Thomas* without confusion, even in cases where the first refiled case was filed within the statute of limitations. In

Wright v. Proctor-Donald, 5th Dist. No. 2012-CA-00154, 2013-Ohio-1973, *appeal not accepted*, 136 Ohio St.3d 1511, 2013-Ohio-4657, for example, the plaintiff filed a complaint for legal malpractice in May 2010 and the court dismissed the complaint shortly thereafter otherwise than on the merits. The plaintiff refiled her complaint in October 2010—before the expiration of the statute of limitations—but voluntarily dismissed this complaint in March 2011. When the plaintiff refiled a second time in a year later in March 2012, well after the expiration of the statute of limitations, defendants moved to dismiss, relying on *Thomas*. *Id.* at ¶ 3-4. The court granted the motion, finding from the savings statute's plain language that it was not triggered by the expiration of the statute of limitations and that rule of *Thomas*—i.e., that the savings statute can be used only once to refile a case—applied. *Id.* at ¶ 16, 17, 21. The court recognized that the rationale behind the limitation on the savings statute "is to obtain finality of decisions" and further the purpose of the civil rules, which is "to prevent indefinite filings." *Id.* at ¶ 13.

Other courts, too, have followed *Thomas* without confusion. *See, e.g., Hall v. Northside Med. Ctr. & Internal Medicine-Surgical Ctr.*, 178 Ohio App.3d 279, 2008-Ohio-4725, ¶ 36 (7th Dist.) (noting that the savings statute "can be used only once to refile a case."); *Dargart v. Ohio Dept. of Transp.*, 171 Ohio App.3d 439, 2006-Ohio-6179, ¶ 22 (6th Dist.) (concluding that plaintiff "cannot use the savings statute to bring the same cause of action a third time."); *Carlson v. Tippett*, 122 Ohio App.3d 489, 491 (11th Dist. 1997) (Plaintiffs' third complaint "was properly disallowed by the trial court because [plaintiffs] had already used the savings statute's remedial provision once to refile their case."); *Hamrick v. Ramalia*, 8th Dist. No. 97385, 2012-Ohio-1953, ¶ 21 ("The savings statute can be

used only once, because otherwise, a plaintiff could infinitely refile her action, and effectively eliminate statutes of limitations."); *Rall v. Arora*, 3d Dist. No. 9-12-56, 2013-Ohio-1392, ¶ 20 ("Since the savings statute can only be used once, the [plaintiffs] are precluded from extending the time period for filing any further."); *Bartlett v. Redford*, 8th Dist. No. 97606, 2012-Ohio-2775, ¶ 15 (noting that the savings statute cannot be used more than once); *Gao v. Barrett*, 10th Dist. No. 10AP-1075, 2011-Ohio-3929, ¶ 13-14 (noting that the savings statute "was not designed to keep actions alive in perpetuity" and that plaintiff "was not authorized to re-invoke the savings statute" for his third complaint); *Iglodi v. Montz*, 8th Dist. No. 68621, 1995 WL 516609, at *2 (Aug. 31, 1995) ("The third refiling of this case is barred because the statute of limitations has expired, and because the savings statute cannot be used more than once, even when the prior cases were involuntarily dismissed without prejudice."); *see also Hancock v. Kroger Co.*, 103 Ohio App.3d 266, 268 (10th Dist.1995) (joining other appellate districts in a pre-*Thomas* case finding that "the savings statute can be used only once to invoke an additional one-year time period in which to refile an action").

There is no question here that Brown refiled her complaint twice—first in 2011 and again in 2012. The Eighth District was merely following well-established authority from this Court and precedent from its court when it too followed *Thomas* and found Brown's thrice-filed, second-refiled complaint barred.

IV. Conclusion

No basis for Supreme Court jurisdiction exists here. There is nothing unsettled or confusing about the analysis for determining whether good cause exists to grant a motion

for extension of time to file an affidavit or merit under Civ.R. 10(D)(2) or the discretion afforded a trial court judge in making that determination. The trial court engaged in that well-established analysis, exercised its considerable discretion, and the appellate court appropriately deferred. There is no need to make this analytical framework any more clear.

Nor is there any confusion in Ohio's savings-statute jurisprudence. This Court has made clear that the savings statute can be used only once to refile a case. The courts below followed that well-established precedent, as have courts around the state, and dismissed Brown's third-filed, twice-refiled complaint.

At bottom, there is no public or great general interest at stake that requires this Court's discretionary review. Jurisdiction should be declined.

Respectfully submitted,

Susan M. Audey (0062818)
(COUNSEL OF RECORD)
Rita A. Maimbourg (0013161)
Jane F. Warner (0074957)
TUCKER ELLIS LLP
950 Main Avenue, Suite 1100
Cleveland, OH 44113-7213
Telephone: 216.592.5000
Facsimile: 216.592.5009
susan.audey@tuckerellis.com
rita.maimbourg@tuckerellis.com
jane.warner@tuckerellis.com

Attorneys for Defendants-Appellees University Hospitals Health System, Inc. and UH Regional Hospitals d/b/a University Hospitals Bedford Medical Center

PROOF OF SERVICE

A copy of the foregoing was served on January 16, 2014 per S.Ct.Prac.R. 3.11(B) by mailing it by United States mail to:

Richard L. Dempsey
RICHARD L. DEMPSEY CO., L.P.A.
U.S. Bank Centre
1350 Euclid Ave., Suite 1550
Cleveland, OH 44115

Attorneys for Plaintiff-Appellant Isabelle H. Brown, Executor of the Estate of Willie Brown

Martin T. Galvin
Marilena DiSilvio
David A. Valent
REMINGER CO., L.P.A.
1400 Midland Bldg.
101 Prospect Ave., West
Cleveland, OH 44115-1093

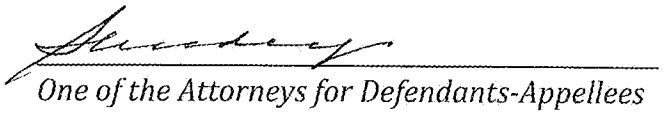
Attorneys for Defendant-Appellee Solon Pointe at Emerald Ridge, LLC

Thomas A. Prislipsky
REMINGER CO., L.P.A.
11 Federal Plaza Central, Suite 300
Youngstown, OH 44503

Attorney for Defendants-Appellees Harborside Healthcare Corporation and Harborside of Cleveland Limited Partnership d/b/a Park East Care and Rehabilitation Center

Brian D. Sullivan
Rafael P. McLaughlin
REMINGER CO., L.P.A.
1400 Midland Bldg.
101 Prospect Ave., West
Cleveland, OH 44115-1093

Attorneys for Defendants-Appellees Harborside Healthcare Corporation and Harborside of Cleveland Limited Partnership d/b/a Park East Care and Rehabilitation Center



One of the Attorneys for Defendants-Appellees University Hospitals Health System, Inc. and UH Regional Hospitals d/b/a University Hospitals Bedford Medical Center