No. ______

IN THE
# Supreme Court of the United States

JACKSON RIDGE REHABILITATION AND CARE, ET AL.,
PETITIONERS,

v.

RHONDA MEADOWS, RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE OHIO SUPREME COURT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

The Employee Retirement Income Security Act of 1974 (hereinafter, "ERISA"), 29 U.S.C. §1001 *et seq*., was enacted to protect employee benefit plan participants from the mismanagement of welfare benefit plans by establishing uniform federal regulations. To safeguard employee benefit plan participants, §1140 makes it unlawful for an employer to take adverse employment action "against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan" or "for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan." 29 U.S.C. §1140. Benefit plan participants enforce these rights through either §1132(a)(1)(B) or §1132(a)(3), depending on the nature of the claim. Federal courts have "exclusive jurisdiction" to adjudicate ERISA claims, unless the claims arise under §1132(a)(1)(B). 29 U.S.C. §1132(e)(1).

By dismissing Petitioner's appeal, the Ohio Supreme Court has construed ERISA claims for retaliation and interference to be enforced through §1132(a)(1)(B), thereby subjecting those claims to concurrent jurisdiction. The Ohio Supreme Court's decision has created a conflict within the Sixth Circuit and among other federal courts.

The question presented is:

Whether ERISA claims for retaliation and interference are enforced through 29 U.S.C. §1132(a)(1)(B), as decided by the Ohio Supreme Court

and the Fifth Circuit Court of Appeals, or through 29 U.S.C. §1132(a)(3), as held by the First, Third, Sixth, and Seventh Circuits.

## PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

Petitioner Jackson Ridge Rehabilitation and Care, the registered trade name for Gaslite Leasing, LLC, has no parent corporation and no publicly held company owns 10% or more of its stock.

Petitioner Providence Healthcare Management, Inc. is a privately held corporation, having no parent corporation, and no publicly held company owns 10% or more of its stock.

## LIST OF RELATED PROCEEDINGS

Petitioners are unaware of any related proceedings.

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## PETITION FOR A WRIT OF CERTIORARI

Jackson Ridge Rehabilitation and Care ("Jackson Ridge") and Providence Healthcare Management, Inc. ("Providence") respectfully petition for a writ of certiorari to review the judgment of the Ohio Supreme Court in this case.

## OPINIONS BELOW

The Ohio Supreme Court's order dismissing the appeal for want of prosecution (Petitioners' Appendix "App." 1a) is reported at 157 Ohio St.3d 1541.

The opinion of the Ohio Fifth District Court holding that ERISA retaliation and interference claims are subject to concurrent jurisdiction (App. 8a-25a) is not reported but is available at 2019 WL 3188044.

The opinions and orders of the Stark County Court of Common Pleas finding that state courts have concurrent jurisdiction (App. 35a-38a, 51a-52a) are not reported.

## JURISDICTION

On April 26, 2017, a magistrate for the Stark County Court of Common Pleas for the State of Ohio found that state courts had concurrent jurisdiction to decide claims for retaliation and interference brought under 29 U.S.C. §1140. App. 37a. The trial court adopted the magistrate's decision on October 5, 2017. App. 42a-43a.

On July 15, 2019, the Fifth District Court of Appeals affirmed the decision of the trial court when it interpreted 29 U.S.C. §1132(e)(1) – the jurisdictional divestiture clause – as vesting concurrent jurisdiction in state courts over claims for ERISA retaliation and interference. App. 18a.

On November 11, 2019, the Ohio Supreme Court exercised its discretionary appellate review power and accepted jurisdiction over the Fifth District's interpretation of 29 U.S.C. §1132(e)(1). App. 4a. On January 21, 2020, the Ohio Supreme Court dismissed the appeal for want of prosecution. App. 2a. The dismissal of an action by the Ohio Supreme Court for want of prosecution operates as an adjudication on the merits unless the court, in its order for dismissal, specifies otherwise. Ohio Civ.R. 41(B)(3); *State ex rel. SuperAmerica Grp. v. Licking Cnty. Bd. of Elections* (1997), 80 Ohio St.3d 182, 185, 685 N.E.2d 507, 510. In its entry, the Ohio Supreme Court failed to specify that their decision operated as anything other than an adjudication on the merits *See*, App. 2a-3a. Consequently, the Ohio Supreme Court affirmed the Fifth District's interpretation of the jurisdictional divestiture clause. *See* Ohio Civ.R. 41(B)(3); *see also*, *SuperAmerica* at 185.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a) and 29 U.S.C. §1331. *See Cox Broad. Corp. v. Cohn*, 420 U.S. 469 (1975); *see also*, *Coventry Health Care of Missouri, Inc. v. Nevils*, 137 S. Ct. 1190, 197 L. Ed. 2d 572 (2017).

## STATUTORY PROVISIONS INVOLVED

Section 1132 of Title 29, United States Code provides, in pertinent part:

(a) PERSONS EMPOWERED TO BRING A CIVIL ACTION A civil action may be brought—

(1) by a participant or beneficiary—

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan;

***

> (e) JURISDICTION
>
> (1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any person referred to in section 1021(f)(1) of this title. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under paragraphs (1)(B) and (7) of subsection (a) of this section.

Section 1140 of Title 29, United States Code provides:

> It shall be unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, this subchapter, section 1201 of this title, or the Welfare and Pension Plans Disclosure Act [29 U.S.C. 301 et seq.], or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan, this subchapter, or the Welfare and Pension Plans Disclosure Act. It shall be unlawful for any person to discharge, fine, suspend, expel, or discriminate against any person because he has given information or has testified or is about to testify in any inquiry or proceeding relating to this chapter or the Welfare and Pension Plans Disclosure Act. In

> the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this chapter or for giving information or testifying in any inquiry or proceeding relating to this chapter before Congress. The provisions of section 1132 of this title shall be applicable in the enforcement of this section.

## STATEMENT

Section 1132(e) of the Employment Retirement Income Security Act ("ERISA") establishes the intent of Congress to vest in the federal courts "exclusive jurisdiction of civil actions" brought under the subchapter, unless the claim is enforced through §1132(a)(1)(B). 29 U.S.C. 1132(e). The question presented here is whether claims for retaliation and interference, as set forth in §1140, are enforced under §1132(a)(1)(B) or §1132(a)(3). If enforced under §1132(a)(1)(B), federal and state courts would have concurrent jurisdiction to adjudicate the claims. 29 U.S.C. §1132(e). If, however, enforced under §1132(a)(3), the federal courts would enjoy exclusive jurisdiction.

Petitioner Jackson Ridge is a long-term care facility that provides nursing care and services to the elderly and disabled citizens of Stark County, Ohio and the surrounding area. Jackson Ridge entered into a contract with Petitioner Providence Healthcare Management to provide certain supportive services, which included negotiating with insurance companies for the provision of health insurance to Jackson Ridge's employees.

Respondent Rhonda Meadows was employed by Jackson Ridge as the director of nursing. App. 9a. She participated in the health plan while employed at the facility. *Id.* at 10a. In accordance with the terms and conditions of the health plan, Respondent's plan participation and benefits ceased on the date her employment terminated.

Respondent filed suit against Petitioners in the Stark County Court of Common Pleas, alleging retaliation under §1140, interference under §1140, breach of contract, and bad faith. App. 27a. Ignoring well-settled law in the Sixth Circuit that these claims are within the exclusive jurisdiction of the federal courts, the trial court proceeded to adjudicate the claims, awarding compensatory damages, medical bills, front pay/diminution of wages, punitive damages, and attorney fees. *Id.* at 40a, 55a.

By departing from the Sixth Circuit's interpretation of §1132(a)(3) and §1132(e), in *Leemis v. Medical Services Research Grp., Inc.*, 75 Fed. Appx. 986 (6th Cir. 2003), the Fifth District Court of Appeals and the Ohio Supreme Court have subjected Ohio employers to the jurisdiction of both the federal and state courts for the adjudication of §1140 claims. This presents an intolerable conflict within the circuit. This case is ideal for resolving the conflict and establishing a nationwide rule. The petition for a writ of certiorari should be granted.

1. ERISA regulates private employer medical benefit plans. It does not require an employer to provide employee benefit plans or prescribe any

type or level of benefit a plan must provide. *See Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). In passing ERISA, Congress "set forth a comprehensive civil enforcement scheme" that included Congress's choice to allow certain remedies related to employee benefit plans while prohibiting others. *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987). To enforce its provisions, ERISA provides for civil liability and other sanctions in the event of breach.

Claims brought under §1140 are enforced through the remedies available under §1132. 29 U.S.C. §1132; *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 145 (1990). Section 1132(a)(3) provides for "appropriate equitable relief." *Id.* In *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993), this Court explained, "[e]quitable relief must mean *something* less than *all* relief." *Id.* at 258. Ultimately, the Court held that "equitable relief" refers to "those categories of relief that were *typically* available in equity[.]" *Id.* at 256. Since that decision, courts have had wide and varied opinions regarding those remedies that were "typically available in equity." This case will not only resolve the jurisdictional question, but also provide further clarification on the remedies available in §1140 claims.

2. Respondent began her employment at Jackson Ridge as the director of nursing on October 17, 2014. App. 9a. One of the benefits offered by Jackson Ridge was group health insurance. *Id.* at 10a. Respondent participated in

this plan until her termination from employment on June 25, 2015. *Id.*

Respondent claims her employment was terminated because she was having medical issues that required surgery. *Id.* at 16a. She had surgery on June 26, 2015. *Id.* at 10a. Following surgery, Respondent learned she no longer had health insurance. *Id.* Because of the surgery, she incurred medical bills in the amount of $31,473.05. *Id.* at 40a.

In July 2015, Respondent received paperwork that would have allowed her to continue health insurance coverage under the Consolidated Omnibus Reconciliation Act ("COBRA"). *Id.* at 28a. She failed to complete the paperwork because she was unable to afford the premium.

3. Respondent filed her ERISA action in the Stark County Court of Common Pleas on October 16, 2015. App. 10a. She claimed retaliation and interference with her protected rights in violation of 29 U.S.C. §1140, breach of contract, and bad faith. Though properly served on Jackson Ridge, the facility failed to timely answer the complaint. *Id.* at 16a. The trial court granted default judgment in favor of Respondent. *Id.* at 11a. Petitioners' motion for relief from judgment was denied. *Id.* Thereafter, Petitioners filed a motion to dismiss for want of jurisdiction, arguing that Respondent's claims were within the exclusive jurisdiction of the federal courts. *Id.* The trial court denied the motion, likening Respondent's claims to those for the denial of benefits. *Id.* at 37a. The trial

court proceeded to award $73,357.05 in damages. *Id.* at 40a. The damage award included damages for lost and diminished wages, medical bills, compensatory damages, and punitive damages. *Id.*

4. On appeal, the Fifth District Court of Appeals held that the order awarding damages was not a final appealable order because the trial court did not explicitly rule on the issue of attorney's fees. App. 50a. The appeal was dismissed and remanded to the trial court. *Id.*

5. On remand, Petitioners filed a motion for reconsideration on the grounds that Respondent's claims were completely preempted and, thus, within the exclusive jurisdiction of the federal courts. Without opinion, the trial court denied Petitioners' motion. App. 51a. The trial court awarded attorney fees in the amount of $19,000.00, thus rendering a final appealable order. *Id.* at 55a.

6. On appeal to the Fifth District Court of Appeals, Petitioners argued that the trial court lacked subject matter jurisdiction to decide Respondent's claims, based on the holdings in *Leemis*, *supra*, *Tolle v. Carroll Touch, Inc.*, 977 F.2d 1129 (7th Cir. 1992), and *Eichorn v. AT&T Corp.*, 484 F. 3d 644, 654 (3rd Cir. 2007). *See*, App. at 13a. Citing *Caterpillar, Inc. v. Williams*, 482 U.S. 286 (1987) and *Bastien v. AT&T Wireless Services, Inc.*, 205 F.3d 983 (7th Cir. 2000), the Fifth District acknowledged that complete preemption is a basis for federal jurisdiction. App. 15a-16a. The court then reasoned, however, that

federal and state courts had concurrent jurisdiction in this case based on the Ohio Supreme Court's holding in *Richland Hosp., Inc. v. Ralyon* (1987), 33 Ohio St. 3d 87, 516 N.E.2d 1236. *Id.* at 16a-17a. The facts of the instant case, however, are markedly different from those in *Ralyon*, as explained *infra*. *See* pp.13-14. Contrary to the express language in the complaint, the court found that Respondent's claims were for the recovery of benefits due under the health plan. App. 16a, 18a. Respondent, however, was not a plan participant on the day of surgery because her health insurance had been cancelled. Consequently, her complaint could not have been for the recovery of benefits due under the health plan. Instead, she was requesting relief from those damages that were directly and proximately related to Petitioners' interference with plan benefits. Moreover, throughout the multitude of hearings in this case, Respondent never entered the plan documents that were provided in discovery into evidence, further demonstrating that she was not attempting to recover benefits under the plan. Respondent's ERISA claims were solely predicated on retaliation and inference with plan benefits and, thus, were within the exclusive jurisdiction of the federal courts. *See, e.g., Leemis, supra.*

7. Petitioners' appealed the decision of the Fifth District Court of Appeals to the Ohio Supreme Court. The court accepted jurisdiction related to the question of whether ERISA claims for retaliation and interference are within the exclusive jurisdiction of the federal courts. App. 4a. When Petitioners attempted to upload their merit brief into the court's docketing system, they

encountered a problem between counsel's document management system and the court's docketing system. The source of the problem was identified and resolved, but the brief was uploaded approximately 15 minutes after the court's 5:00 p.m. deadline. The clerk of courts for the Ohio Supreme Court refused to accept Petitioners' merit brief, and the court dismissed Petitioners' appeal for want of prosecution. *Id*. at 2a. The court also denied Petitioners' motion for reconsideration. *Id*. at 1a.

8. The dismissal of an action by the Ohio Supreme Court for want of prosecution operates as an adjudication on the merits unless the court, in its order for dismissal, specifies otherwise. Ohio Civ.R. 41(B)(3); *SuperAmerica*, 80 Ohio St.3d 182, 185. In its entry, the Ohio Supreme Court failed to specify that the dismissal operated as anything other than an adjudication on the merits. *See*, App. 2a-3a. Consequently, the Ohio Supreme Court adopted the Fifth District's interpretation of the jurisdictional divestiture clause, vesting concurrent jurisdiction in stated and federal courts to adjudicate §1140 claims. *See* Ohio Civ.R. 41(B)(3); *see also*, *SuperAmerica* at 185.

## REASONS FOR GRANTING THE PETITION

The decision of the Ohio Supreme Court in this case is squarely in conflict with the Sixth Circuit Court of Appeals on a question of statutory interpretation under ERISA and is of manifest importance to the sound administration of the statutory scheme. This conflict is unlikely to be

resolved without the Court's intervention. The lack of uniformity concerning jurisdiction to decide ERISA claims for retaliation and interference urgently requires resolution to ensure that employers are not subject to conflicting venues depending on where ERISA plaintiffs choose to sue them, and to ensure that employers can order their affairs so as to minimize the risk of protracted litigation like the matter presented herein. Because this case is ideal for resolving the conflict, the petition for a writ of certiorari should be granted.

### A. The Decision Below Squarely Presents A Conflict Within The Sixth Circuit Court Of Appeals

This case presents a conflict within the Sixth Circuit, as the decision of the Ohio Supreme Court disrupts a settled body of case law holding that federal courts have "exclusive jurisdiction" to adjudicate claims for retaliation and interference brought under §1140. Until this case, state courts sitting in the circuit unanimously agreed that plan participants were required to file these types of claims in federal court. The decision below, however, permits plan participants in Ohio to bring ERISA retaliation and interference claims before the state courts. This means that federal courts will have exclusive jurisdiction over ERISA retaliation and interference claims in Kentucky, Michigan, and Tennessee, but concurrent jurisdiction in Ohio.

The decision below fails to recognize the distinction between claims for retaliation and interference and those for the denial of benefits. Claims for retaliation and interference may be brought by a current or

former plan participant when the employer has taken an adverse employment action proscribed by §1140. Conversely, claims for the denial of benefits require no adverse employment action on behalf of the employer. Instead, the plan participant is claiming he is due some benefit under the terms and conditions of the plan document that has been wrongfully denied.

The Court's review is warranted to clarify the distinctions between §1140 claims and those for the denial of benefits that has culminated in an intra- and inter-jurisdictional conflict.

1. The opinion of the Ohio Fifth District Court of Appeals, as adopted by the Ohio Supreme Court, reasoned that state courts had current jurisdiction over claims for retaliation and interference, because these claims were akin to those for the denial of benefits. App. 16a, 18a. The court analogized the claims in this case to those brought by a plan participant in *Ralyon*, 33 Ohio St.3d 87. App. 16a-17a. The claims, however, are markedly different.

In *Ralyon*, the plan participant verified medical benefits coverage with the plan trustee and Richland Hospital. *Ralyon* at 87-88. The plan trustee subsequently denied coverage, claiming Richland Hospital was not a "hospital" as defined under the plan. *Id*. at 88. Richland Hospital sued the plan participant for non-payment in state court, who then cross-claimed the plan for indemnification of the payment of her medical bills. *Id*. On appeal, the plan trustee argued that the state court lacked jurisdiction to adjudicate the claims against it. *Id*. at 89. Reasoning that the plan participant's claims were for the recovery of benefits as set forth in 29 U.S.C.

§1132(a)(1)(B), the Supreme Court held that state courts had concurrent jurisdiction to adjudicate the claims. *Id*. at 89-90. Importantly, the plan participant in *Ralyon* never argued that she was subjected to an adverse employment action. She never asserted claims for retaliation and/or interference.

Conversely, in this case, Respondent has claimed that Petitioners terminated her employment because the company wanted to prevent her from using her medical benefits. App. 16a. The complaint filed in the Stark County Court of Common Pleas very clearly set forth claims for retaliation and interference in violation of 29 U.S.C. §1140. *Id*. at 36a. Plaintiff's claims were not defined by 29 U.S.C. §1132(a)(1)(B), but rather §1132(a)(3).

Contrary to the opinion below, §1140 claims and claims for the denial of benefits are neither identical nor interchangeable. The purpose of the claims and the remedies for violations are markedly different. If the claims were synonymous, Congress would not have set forth two distinct enforcement mechanisms. *See* §1132(e).

2. The Sixth Circuit Court of Appeals was asked to determine whether federal courts have exclusive jurisdiction over ERISA retaliation and interference claims in *Leemis*, 75 Fed. Appx. 986. In *Leemis*, the plaintiff alleged that his employment was terminated because he criticized how his employer handled retirement account contributions. *Id*. at 987. Initially, he brought claims for retaliation and interference in the state court. *Id*. The trial court held that his claims were within the exclusive jurisdiction of the federal courts and dismissed. *Id*. Thereafter, plaintiff filed his

complaint in the federal district court, but his claims were now held to be untimely and dismissed. *Id*.

On appeal, the Sixth Circuit was asked to decide under which subsection of 29 U.S.C. §1132 his ERISA retaliation and interference claims should be enforced. *Id*. at 988. Relying on the sound reasoning of the Seventh Circuit in *Tolle v. Carroll Touch, Inc*., 977 F.2d 1129 (7th Cir. 1992), the court found that §1132(a)(1)(B) was "designed to provide a mechanism for an aggrieved individual to enforce contractual rights under an employee benefits plan." *Id*. at 989. Conversely, a claim "for monetary damages for improper termination from employment, based upon an alleged violation of 29 U.S.C. §1140" was not within the reach of §1132(a)(1)(B) and, thus, within the exclusive jurisdiction of the federal courts. *Id*.

Similar to the plaintiff in *Leemis*, Respondent specifically alleged causes of action under 29 U.S.C. §1140 in her complaint. App. 36a. Moreover, her prayer for relief was for monetary damages, not for the recovery of a plan benefit. *Id*. at 16a. Finally, she set forth an adverse employment action – termination of employment – as the predicate action for filing the complaint. *Id*. at 27a-28a. The conflict between the holding in *Leemis* and the decision in the underlying case is undeniable.

3. The underlying courts had the opportunity to distinguish *Leemis* from the facts of the instant case but declined to do so. Though cited in the merit brief filed on behalf of Petitioners, the court failed to reference *Leemis* in its opinion. *See* App. 8a-25a. Instead, the court relied on *Ralyon*, which is wholly inapposite. There can be no doubt that this case

presents a conflict within the circuit that warrants this Court's review.

Until this case, the holding in *Leemis* has been consistently followed in the circuit. In *Evanoff v. Banner Mattress Co., Inc.*, 550 F. Supp. 2d 697 (N.D. Ohio 2008), plaintiff sought monetary damages for wrongful termination and interference with benefits in violation of 29 U.S.C. §1140. *Id*. at 698-99. Plaintiff requested a jury trial on his §1140 claim. *Id*. at 699. Finding the claims to be enforced through §1132(a)(3), not §1132(a)(1)(B), the court held his relief was available only in equity. *Id*. at 700.

Similarly, in *Preston v. John Alden Life Ins. Co.*, No. 1:05CV173, 2006 WL 2010763 (S.D. Ohio July 17, 2006), the court adopted the recommendations of the magistrate, who found that plaintiff's claim for interference was governed by §1132(a)(3). *Id*. at *4. In *Preston*, plaintiff alleged that his employer had interfered with plan coverage by refusing to pay premiums on his behalf after the company had terminated his employment for failure to return from a leave of absence. *Id*. at *2 and *4.

Moreover, in *Taylor v. Aramark Services Corp.*, No. 1:03CV337, 2004 WL 1854177 (E.D. Tenn. Mar. 4, 2004), the court found that plaintiff's retaliatory discharge claims were subject to §1132(a)(3), rendering them time-barred. *Id*. at *3. In *Gardner v. Heartland Indus. Partners, LP*, No. 09-13292, 2011 WL 4507300 (E.D. Mich. Sept. 29, 2011), plaintiff's motion for remand was denied, because his ERISA interference claim was in the exclusive jurisdiction of the federal court. *Id*. at *1. Finally, in *Hogan v. Jacobson*, No. 3:12-CV-820, 2015 WL 1931845 (W.D.

Ky. Apr. 28, 2015), plaintiff's claim for interference with ERISA rights was dismissed because she failed to set forth an adverse employment action. *Id*. at *4.

Here, the decision below departs from the consensus within the circuit that claims for retaliation and interference are within the exclusive jurisdiction of the federal courts. The need for a uniform national rule on the jurisdictional posture of these claims is patent and urgent.

### B. The Decision Below Magnifies The Conflict Between The Courts Of Appeals

Several courts in circuits other than the Sixth Circuit have been called upon to decide whether federal courts have exclusive jurisdiction to adjudicate ERISA retaliation and interference claims. The majority have held that federal courts are the exclusive arbiter of these cases. Conversely, the District Court for the Northern District of Texas has held that ERISA retaliation and interference claims are enforced under both 29 U.S.C. §1132(a)(1)(B) and (a)(3), thereby subjecting the claims to the concurrent jurisdiction of federal and state courts and the remedies set forth under both enforcement provisions. *Goldberg v. Cushman & Wakefield Nat'l Corp*., No. 4:09-CV-700, 2010 WL 3835143, *5 (N.D. Tex. Sept. 30, 2019). The Ohio Supreme Court's decision below and *Goldberg* illuminate the conflict existing between the circuits. Review by this Court is of the utmost importance to resolve the jurisdictional conflict which, in turn, will clarify the availability of remedies.

1. The Seventh Circuit Court of Appeals was the first court to provide guidance for courts to determine

when a section §1140 claim is enforceable through §1132(a)(1)(B) rather than §1132(a)(3). In *Tolle*, 977 F.2d 1129, plaintiff claimed that Carroll Touch, Inc. ("CTI") terminated her employment to prevent her from receiving benefits in violation of 29 U.S.C. §1140 and that the termination breached both the employment agreement and the implied covenant of good faith and fair dealing. *Id*. at 1132-133. The court was called upon to decide whether plaintiff's ERISA claims arose under §1132(a)(1)(B) or §1132(a)(3).

When analyzing plaintiff's interference claim, the court noted that this type of claim "is not concerned with whether a defendant complied with the contractual terms of an employee benefit plan. Rather, the emphasis of a [§1140] action is to prevent persons and entities from taking actions which might cut off or interfere with a participant's ability to collect present or future benefits or which punish a participant for exercising his or her rights under an employee benefit plan." *Id*. at 1134. The court reasoned that §1140 claims are not concerned with whether the individual qualified for plan benefits, but whether the employer "interfer[ed] with a participant's ability to meet these qualifications in the first instance." *Id*. Conversely, §1132(a)(1)(B) claims are brought for the purpose of recovering benefits under the plan contract. *Id*. Upon this reasoning, the court concluded that claims for interference in violation of §1140 were within the exclusive jurisdiction of federal courts. *Id*.

The Third Circuit agreed with *Tolle* and held that an ERISA claim for interference with benefits is not enforceable under §1132(a)(1)(B) but rather §1132(a)(3). *Eichorn v. AT&T Corp*., 484 F. 3d 644,

654 (3rd Cir. 2007). The court explained that plaintiffs "alleged that the defendants interfered with their ability to become eligible for further benefits, not that the defendants have breached the terms of the plan itself." *Id.* Plaintiff could find relief only under §1132(a)(3), which conferred exclusive jurisdiction upon the federal courts. *Id.*

One of the first state courts to acknowledge a lack of jurisdiction over §1140 claims was an Illinois appellate court. In *Summers v. U.S. Tobacco Co.*, 214 Ill. App. 3d 878, 574 N.E.2d 206 (1991), the court noted that plaintiff had explicitly cited §1140 as the ERISA provision breached by defendants. *Id.* at 884. Given the express nature of the claim, "the circuit court lacked subject-matter jurisdiction to hear the section 1140 action because such actions belong exclusively in Federal courts." *Id.*

Similar to the plaintiffs in *Tolle* and *Eichorn*, Respondent has argued that Petitioners interfered with her ability to become eligible for benefits by terminating her employment. App. 16a. She has not argued that she was denied a benefit promised under the benefit plan; rather, she claims an adverse employment action deprived her of the right to participate in the plan. Moreover, Respondent specifically cited §1140 in her complaint against Petitioners. *Id.* at 36a. Like the court in *Summers*, the underlying courts should have found that Respondent filed the complaint in a court lacking jurisdiction to adjudicate her claims. Instead of this case winding its way through the state courts, it should have been within the ambit of the federal courts. Moreover, because the underlying courts allowed Respondent to enforce her ERISA claims through 29 U.S.C.

§1132(a)(1)(B), she has been awarded damages that are not available to similarly situated plaintiffs in other states and circuits.

2. The split among the circuits first manifested when the United States District Court for the Northern District of Texas disagreed with the court's analysis in *Tolle* and held that an ERISA interference claim was enforced through §1132(a)(1)(B). In *Goldberg*, 2010 WL 3835143, plaintiff alleged that her husband's employment was terminated to avoid paying death benefits. *Id.* at *3. The *Goldberg* court opined that employers had "little reason to abstain from interfering with the rights of a participant or beneficiary" if such claims were enforced solely through §1132(a)(3), since the provision afforded only equitable relief. *Id.* at *4. The court concluded that Congress did not intend to leave participants without an adequate remedy and, thus, §1140 claims could be enforced through both §1132(a)(1)(B) and (a)(3). *Id.* at *5.

The court's opinion with respect to the intention of Congress is nothing more than the *ipse dixit* of the court. The Court cited no portion of the Congressional record. Importantly, in setting forth its opinion, the court has opened the door for plaintiffs to bring ERISA interference and retaliation claims in both federal and state courts within the Fifth Circuit.

The decision below and *Goldberg* represent a significant departure from the consensus that §1140 claims are enforced through §1132(a)(3). This Court should grant Petitioners' petition for a writ of certiorari to resolve the conflict between the circuits. A plaintiff in one circuit should not be foreclosed from

bringing §1140 claims in the court of his choice while a plaintiff in another circuit is permitted to select the court that is most sympathetic to his cause. Further, the split among the circuits has adversely impacted employers by exposing some to a wider array of damages than others.

### C. The Question Presented Is Exceptionally Important And Warrants Review In This Case

The question presented is of substantial legal and practical importance, and this case is an optimal vehicle for the Court's review.

1. As long as the question presented remains unanswered, thousands of employers and employees in Ohio will operate in an environment lacking predictability and uniformity in determining where to file ERISA retaliation and interference claims and the remedies attached thereto. Further, the underlying decision could be used in other circuits and states to divest the federal courts of exclusive jurisdiction to adjudicate these claims. Beginning in 2015, courts have seen an increase in the number of §1140 claims. *See* Cavalieri, F. and Delaney, S., *Now Trending: Litigation of Interference and Retaliation Claims under ERISA Section 510*, ERISA Report, Vol. 10, Issue 1 (2015). In addition to being pled of their own accord, these claims are "being tacked onto other claims, including wrongful discharge, age, gender, and disability discrimination claims and whistleblower actions[.]" *Id.* The jurisdictional divide limits the type of action as well as the extent of recoverable damages in some states and circuits, but not in others.

The Ohio Supreme Court's decision has injected uncertainty into the ERISA landscape. As this Court has recognized, ERISA generally requires "efficiency, predictability, and uniformity" for the effective administration of employee benefit plans. *Conkright v. Frommert*, 559 U.S. 506, 518 (2010). In accordance with this recognition, the Court routinely grants certiorari to resolve conflicts among the courts of appeals concerning the correct interpretation of ERISA provisions. *See*, *e.g.*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652, 198 L. Ed. 2d 96 (2017), *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 191 L. Ed. 2d 795 (2015). Here, the importance of granting certiorari is even more vital because the conflict is both within the circuit and between the circuits. It is difficult to imagine an application of law in greater need of uniformity than that of jurisdiction.

2. This case is ideal for resolving the jurisdictional struggle in the Sixth Circuit and deciding, once and for all, the question of whether federal courts enjoy exclusive jurisdiction over ERISA claims for retaliation and interference. The relevant facts are largely undisputed. The question presented was the focus of Petitioners' appellate efforts in the Ohio courts. There are no obstacles to prevent the Court from deciding the question, particularly in light of the manifest need for uniformity. Review by this Court is warranted.

## CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this petition for a writ of certiorari be granted.

Respectfully submitted,

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*Counsel for Petitioners*

April 20, 2020

# APPENDIX

*Appendix A*

THE SUPREME COURT OF OHIO

---

RHONDA MEADOWS
v.
JACKSON RIDGE REHABILITATION AND CARE,
et al.

---

CASE NO. 2019-1197

---

RECONSIDERATION ENTRY

STARK COUNTY

Decided: 3-11-2020

It is ordered by the court that the motion for reconsideration in this case is denied.

(Stark County Court of Appeals; No. 2018 CA 00184)

*/s/ Maureen O'Connor*
Maureen O'Connor
Chief Justice

**The Official Case Announcement can be found at http:/www.supremecourt.ohio.gov/ROD/docs/**

*Appendix B*

THE SUPREME COURT OF OHIO

---

RHONDA MEADOWS
v.
JACKSON RIDGE REHABILITATION AND CARE, et al.

---

CASE NO. 2019-1197

---

JUDGMENT ENTRY

APPEAL FROM THE COURT OF APPEAL

Decided: 1-21-2020

This cause is pending before the court as an appeal from the Court of Appeals for Stark County. The records of this court indicate that appellants have not filed a merit brief, due January 14, 2020, in compliance with the Rules of Practice of the Supreme Court of Ohio and therefore have failed to prosecute this cause with the requisite diligence.

Upon consideration thereof, it is ordered by the court that this cause is dismissed.

It is further ordered that appellants' motion to proceed to oral argument is denied as moot.

It is further ordered that a mandate be sent to and filed with the clerk of the Court of Appeals for Stark County.

(Stark County Court of Appeals; No. 2018 CA 00184)

*/s/ Maureen O'Connor*
Maureen O'Connor
Chief Justice

**The Official Case Announcement can be found at http:/www.supremecourt.ohio.gov/ROD/docs/**

*Appendix C*

THE SUPREME COURT OF OHIO

---

RHONDA MEADOWS
v.
JACKSON RIDGE REHABILITATION AND CARE, et al.

---

CASE NO. 2019-1197

---

JUDGMENT ENTRY

APPEAL FROM THE COURT OF APPEAL

Decided: 11-6-2019

Upon consideration of the jurisdictional memoranda filed in this case, the court accepts the appeal on Proposition of Law No. I only. The clerk shall issue an order for the transmittal of the record from the Court of Appeals for Stark County, and the parties shall brief this case in accordance with the Rules of Practice of the Supreme Court of Ohio.

(Stark County Court of Appeals; No. 2018 CA 00184)

*/s/ Maureen O'Connor*
Maureen O'Connor
Chief Justice

**The Official Case Announcement can be found at http:/www.supremecourt.ohio.gov/ROD/docs/**

*Appendix D*

IN THE COURT OF APPEALS
FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

---

RHONDA MEADOWS
Plaintiff-Appellee

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants-Appellants

---

CASE NO. 2018 CA 00184

---

JUDGMENT ENTRY

Entered: 7-15-2019

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Stark County, Ohio, is affirmed.

Costs assessed to Appellants.

*/s/John W. Wise*
HON. JOHN W. WISE

*/s/ W. Scott Gwin*
HON. W. SCOTT GWIN

*/s/ Patricia D. Delaney*
HON. PATRICIA D. DELANEY

*Appendix E*

IN THE COURT OF APPEALS
FOR STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

---

RHONDA MEADOWS
Plaintiff-Appellee

v.

JACKSON RIDGE REHABILITATION AND CARE,
et al.
Defendants-Appellants

---

CASE NO. 2018 CA 00184

---

OPINION

7-15-2019

JUDGES:
Hon. W. Scott Gwin, P.J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

-

| CHARACTER OF PROCEEDING: | Civil Appeal from the Court of Common Pleas, Case No. 2015 CV 02169 |
|---|---|

| | |
|---|---|
| JUDGMENT: | Affirmed |
| DATE OF JUDGMENT ENTRY: | July 15, 2019 |

APPEARANCES:

| | |
|---|---|
| For Plaintiff-Appellee | For Defendants-Appellants |
| ROBERT J. TSCHOLL<br>400 South Main Street<br>North Canton, Ohio 44720 | G. BRENDA COEY<br>THE COEY LAW FIRM LLC<br>29225 Chagrin Blvd., Suite 230<br>Cleveland, Ohio 44122 |

*Wise, J.*

**{¶1}** Defendant-appellants Jackson Ridge Rehabilitation and Care and Providence Healthcare Management, Inc. [collectively "Appellants"] appeal the December 5, 2018, Judgment Entry of the Stark County Court of Common Pleas granting Appellee Rhonda Meadows' motion for attorney fees.

STATEMENT OF THE FACTS AND CASE

**{¶2}** The relevant facts and procedural history are as follows.

**{¶3}** Appellee Rhonda Meadows is a registered nurse. She was hired by Appellants to be the director of nursing at Jackson Ridge Rehabilitation and Care in September 2014. Jackson Ridge is the registered trade name of Gaslite Leasing, LLC and Providence

Healthcare Management is an affiliated management company.

**{¶4}** Meadows' terms of employment included health care under the employer sponsored health care plan. Meadows took advantage of that offered benefit and began working for Appellants at Jackson Ridge on or about October 17, 2014.

**{¶5}** In May 2015, Meadows suffered an acute medical condition and required time off for surgery. Meadows contacted Appellants' management regarding her need for surgery. Appellants requested that Meadows wait until the annual survey was completed before surgery was scheduled.

**{¶6}** In mid-June 2015, Meadows medical condition became emergent and she returned to her physician. The surgery was scheduled for June 26, 2015. Meadows immediately conveyed to Appellants her need for surgery. Meadows claimed that she was informed on June 25, 2015 that if she had the surgery she would be terminated from her employment.

**{¶7}** Meadows claimed she had the surgery to relieve her pain on June 26, 2015. She later learned that not only had Appellants terminated her employment on June 25, 2015, but they had terminated her health care insurance as well, so her surgery and hospital stay were not covered. However, Meadows contended that Appellants continued to deduct health care premiums from her pay, which was shown on her last pay stub on July 3, 2015.

**{¶8}** Meadows filed suit on October 16, 2015.

**{¶9}** On October 23, 2015, Jackson Ridge received service of Meadows' Complaint.

**{¶10}** Jackson Ridge failed to timely answer, and Meadows moved the trial court for default judgment against Appellants on Friday, December 4, 2015.

**{¶11}** On Monday, December 7, 2015, the trial court granted default judgment.

**{¶12}** On December 11, 2015, Jackson Ridge moved the trial court for leave to file its Answer *instanter*.

**{¶13}** On December 15, 2015, Appellants filed a Civ.R. 60(B) Motion for Relief from Judgment.

**{¶14}** On August 25, 2016, following a hearing conducted by the Magistrate, the trial court denied these Motions.

**{¶15}** On September 9, 2016, the trial court set a Damage hearing for October 27, 2016.

**{¶16}** On September 23, 2016, Appellant filed a Notice of Appeal with this Court. *See* Case No. 2016 CA 00174.

**{¶17}** On October 24, 2016, this Court dismissed the appeal as not a final appealable order.

**{¶18}** The trial court reset the damage hearing for December 16, 2016.

**{¶19}** On December 15, 2016, Appellants filed a Motion to Dismiss for Lack of Jurisdiction. The parties

briefed the Motion and it was denied on April 26, 2017.

**{¶20}** The trial court set a third damages hearing for May 18, 2017.

**{¶21}** On May 18, 2017, Appellee and her counsel appeared. Appellants and their counsel did not. The magistrate called the Appellant's attorney and learned that the attorney had left the firm and had not updated her address with the Stark County Common Pleas Court or with the Ohio Supreme Court. (May 18, 2017, T. at 3-4).

**{¶22}** The magistrate proceeded with the hearing on May 18, 2017 and entered a decision on June 21, 2017. The Court entered judgment for Meadows and against Appellants in the amount of Seventy-Three Thousand Three Hundred Fifty-Seven 05/100 Dollars ($73,357.05) plus interest.

**{¶23}** On June 30, 2017, Appellants filed a Motion for Stay and objections to the magistrate's decision.

**{¶24}** On July 3, 2017, Appellants filed a motion to set aside the judgment of June 21, 2017.

**{¶25}** On October 5, 2017, the trial court overruled those objections and adopted the Magistrate's Decision as a Final Entry.

**{¶26}** Appellants appealed the trial court's judgment entry to this Court, which dismissed the appeal for lack of a final appealable order based on the fact that the trial court failed to explicitly rule on the issue of attorney fees. *See* Case No. 2017CA00207.

**{¶27}** On September 7, 2018, subsequent to the remand, Appellants filed a Motion for Reconsideration, arguing that Appellee's claims were completely pre-empted and within the exclusive jurisdiction of the federal courts.

**{¶28}** By Judgment Entry filed November 6, 2018, the trial court denied Appellants' motion for reconsideration.

**{¶29}** By Magistrate's Decision/Judgment Entry filed December 5, 2018, the trial court granted Appellee's motion for attorney fees, entering judgment in favor of Appellee in the amount of Nineteen Thousand Dollars ($19,000.00).

**{¶30}** Appellants now appeal, raising the following assignments of error:

ASSIGNMENTS OF ERROR

**{¶31}** "I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO DECIDE PLAINTIFF-APPELLEE'S CLAIMS.

**{¶32}** "II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF-APPELLEE'S MOTION FOR DEFAULT JUDGMENT AND DENYING DEFENDANTS-APPELLANTS' MOTION TO SET ASIDE DEFAULT JUDGMENT.

**{¶33}** "III. THE TRIAL COURT ERRED IN AWARDING DAMAGES BEYOND THOSE AUTHORIZED BY STATUTE."

I.

**{¶34}** In their first assignment of error, Appellants argue that the trial court lacked subject matter jurisdiction to hear Appellee's claims. We disagree.

**{¶35}** Subject-matter jurisdiction is a threshold issue and must be determined prior to the merits. Appellants assert that the trial court's interpretation of ERISA is wrong. However, Appellants' argument erroneously equates preemption with jurisdiction.

**{¶36}** Generally, state tribunals have the authority to decide questions of federal law, including questions of federal preemption. *El Paso Natural Gas Co. v. Neztsosie* (1999), 526 U.S. 473, 486, 119 S.Ct. 1430, 143 L.Ed.2d 635, fn. 7 ("Under normal circumstances, * * * state courts * * * can and do decide questions of federal law, and there is no reason to think that questions of federal preemption are any different"). A state tribunal is not deprived of jurisdiction to decide federal questions unless Congress intends a federal forum to be the exclusive jurisdiction in an area, such as it did in the case of the NLRB. See *lnternatl. Longshoremen's Assn., AFL-C/O v. Davis* (1986), 476 U.S. 380, 391, 106 S.Ct. 1904, 90 L.Ed.2d 389 (holding that preemption under *Garmon* extinguishes state jurisdiction). In Section 77r, however, Congress has not expressed such an intention, and in fact, has merely designated a choice of federal law over state law. Therefore, in this matter, preemption is unrelated to jurisdiction, and jurisdiction remains a threshold question.

**{¶37}** In the case of *Cunningham v. Aultcare Corporation*, 5th Dist. No. 2002-CA-00375, 2003-Ohio-3085, this Court discussed the preemption of Ohio law by federal law. We said:

> At issue in this case is whether, in the case *sub judice*, Ohio law is preempted by federal law with respect to the enforceability of the reimbursement clause in the insurance contract between appellant and appellees. In order to address such issue, we must first distinguish between complete preemption and ordinary preemption. * * * [A] plaintiff may generally avoid federal jurisdiction entirely by pleading solely state law claims. *Franchise Tax Bd. of Calif v. Constr. Laborers Vacation Trust for S. Cal.* (1983), 463 U.S. 1, 103 S.Ct. 2841, 77 L.Ed.2d 420. However, there is an exception to this general rule. If federal law completely preempts a plaintiff's state law claim, regardless of the artfulness of the pleading, a plaintiff cannot escape federal jurisdiction. *Botsford v. Blue Cross and Blue Shield of Montana, Inc.* (2002), 314 F.3d 390. "To preempt state-law causes of action *completely*, federal law must both: (1) conflict with state law (conflict preemption) and (2) provide remedies that displace state law remedies (displacement)." *Id.* at 393. While *ordinary* preemption is a defense to the application of state law and may be invoked in either federal or state court, in contrast, *complete* preemption provides a basis for federal jurisdiction as opposed to simply a defense. *See Caterpiller, Inc. v. Williams* (1987), 482 U.S. 386, 107 S.Ct. 2425, 96 L.Ed.2d 318. In the case of complete

> preemption, removal to federal court is proper. *See Bastien v. AT & T Wireless Services, Inc.*, (2000), 205 F.3d 983. *Cunningham*, ¶ 15, emphasis *sic*.

**{¶38}** In *Richland Hospital, Inc. v. Ralyon*, 33 Ohio St.3d 87, 516 N.E.2d 1236 (1987), the Ohio Supreme Court found state and federal courts have concurrent jurisdiction to determine benefits and award attorney fees in an appropriate case, but state courts have no jurisdiction to determine what the court termed "extracontractual benefits", such as punitive damages. The court also found federal courts have exclusive jurisdiction over claims for breach of fiduciary duty.

**{¶39}** In the case at bar, Meadows brought a claim under the Employee Income Retirement Security Act of 1974 ["ERISA"], seeking reimbursement of the healthcare costs she incurred as a result of the cancellation of her healthcare coverage and interference with her rights to use the plan, breach of contract, and bad faith. Appellee did not bring a breach of fiduciary duty claim. As stated above, Appellants failed to respond to the Complaint, and the trial court entered Default Judgment.

**{¶40}** In *Raylon*, the Ohio Supreme Court reviewed a case similar to the one at bar. Plaintiffs received verification of medical benefits coverage from a plan trustee, and one of the plaintiffs then received treatment requiring a forty-day stay in a hospital. Subsequently, the insurance provider denied the plaintiffs' claim for benefits, determining that, because the hospital lacked on-site surgical facilities, it was not a "hospital" within the plan's definition of a

covered hospital. The patient and her husband brought suit against the insurance company for expressly, intentionally and maliciously misrepresenting the plan coverage and asked for indemnification of the hospital and doctor bills they had incurred, as well as punitive damages and attorney fees. The Ohio Supreme Court cited Section 1132(e)(1), Title 29, U.S.Code distinguishing between exclusive jurisdiction of federal courts and concurrent jurisdiction between state and federal courts. It provides:

> (e)(1) Except for actions under subsection (a)(1)(B) of this section, the district courts of the United States shall have exclusive jurisdiction of civil actions under this subchapter brought by the Secretary or by a participant, beneficiary, or fiduciary. State courts of competent jurisdiction and district courts of the United States shall have concurrent jurisdiction of actions under subsection (a)(1)(B) of this section.
>
> Subsection (a)(1)(B) provides a participant may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan."

**{¶41}** The Supreme Court interpreted the above language to mean the common pleas court had concurrent jurisdiction over the claims for denial of benefits and for attorney fees, but ERISA vested exclusive jurisdiction to federal courts for punitive damages. The court vacated the award of punitive

damages and remanded the remainder of the case to the trial court because it had applied Ohio state law instead of ERISA. It did not order the trial court to dismiss the action for lack of jurisdiction, even though it appears there were no state-law claims in the case.

**{¶42}** We have reviewed the complaint and find it does not appear beyond doubt that appellee can prove no set of facts warranting a recovery under both state law and federal law. We further find the trial court has concurrent jurisdiction with the federal courts and can apply federal law to the ERISA claims.

**{¶43}** Appellants' first assignment of error is overruled.

II.

**{¶44}** In their second assignment of error, Appellants argue the trial court erred in denying Appellants' Civ.R. 60(B) motion seeking relief from judgment.

**{¶45}** Civ.R. 60(B) states as follows:

> (B) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; Etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated

> intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

**{¶46}** A motion for relief from judgment under Civ.R. 60(B) lies in the trial court's sound discretion. *Griffey v. Rajan*, 33 Ohio St.3d 75, 514 N.E.2d 1122 (1987). In order to find an abuse of that discretion, we must determine the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 450 N.E.2d 1140 (1983).

**{¶47}** In *GTE Automatic Electric Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus, the Supreme Court of Ohio held the following:

> To prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the

> motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or proceeding was entered or taken.

**{¶48}** Appellants, in the case *sub judice*, allege in their motion that they were entitled to relief from judgment because Providence Healthcare Management timely answered the Complaint after being served with the Summons and Complaint on December 22, 2015, and (2) Jackson Ridge's failure to answer was due to excusable neglect.

**{¶49}** Initially, we find that Appellee attempted service on Providence Healthcare through its statutory agent at the registered address. Service upon a corporation may be achieved by serving the statutory agent of the corporation. R.C. §1701.07(H); Civ.R. 4.2(F). The statutory agent may be served at the address as it "appears upon the record in the office of the secretary of state." R.C. §1701.07(H). If the statutory agent changes the address from that appearing upon the record in the office of the Secretary of State, the corporation or statutory agent "*shall* forthwith file" the new address with the Secretary of State. (Emphasis added.) R.C. §1701.07(E).

**{¶50}** Further, we find that both Providence and Gaslite had actual notice in this matter. An Affidavit filed by Appellants demonstrates that Gaslite informed Providence of the lawsuit prior to the Answer date, however, Providence failed to file a timely answer.

**{¶51}** In the instant case, Appellee served Gaslite Leasing, LLC with a copy of the Complaint on October 23, 2015. Appellee served Jackson Ridge as a registered trade name of Gaslite Leasing, LLC.

**{¶52}** R.C. §1329.10(C) provides that "[a]n action may be commenced or maintained against the user of a trade name or fictitious name whether or not the name has been registered or reported in compliance with R.C. §1329.01 of the Revised Code."

**{¶53}** R.C. §1309.01(A)(2) defines a "fictitious name" as a "name used in business or trade that is fictitious and that the user has not registered or is not entitled to register as a trade name."

**{¶54}** The purpose of R.C. §1329.10 is to encourage the registration and reporting of fictitious names with the state. *Family Med. Found., Inc. v. Bright*, 96 Ohio St.3d 183, 2002-Ohio-4034, 772 N.E.2d 1177, ¶ 10. Thus, the Ohio Supreme Court held in *Family Med. Found.* that "we believe that the General Assembly intended for R.C. 1329.10(C) to allow suit to be brought against a fictitious party named only by its fictitious name." *Id.* It stated that it agreed with the statement that a defendant should not be allowed "to profit by the confusion resulting from its having done business under a fictitious name." *Id.* at ¶ 11, 772 N.E.2d 1177, quoting *Zinn v. Pine Haven, Inc.*, 5th Dist. Tuscarawas No. 1578, 1982 Ohio App. LEXIS 14133, *4, 1982 WL 11268 (Aug. 12, 1982).

**{¶55}** Appellants specifically argue the trial court erred in finding no excusable neglect. Appellants argue that they forwarded the Complaint to their legal counsel, and due to a miscommunication they were

under the mistaken belief that counsel had filed an answer.

**{¶56}** To determine whether neglect is "excusable" under Civ.R. 60(B)(1), a court must consider all the surrounding facts and circumstances. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 520 N.E.2d 564 (1988). Excusable neglect has been defined as some action "not in consequence of the party's own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident." *Maggiore v. Barensfeld*, 5th Dist. Stark Nos. 2011CA00180, 2012-Ohio-2909, 2012 WL 2415184.

**{¶57}** It is well-settled that mere carelessness on a litigant's part, or on the part of his or her attorney, is not sufficient to rise to the level of mistake, inadvertence, surprise, or excusable neglect. *Muskingum Watershed Conservatory District v. Kellar*, 5th Dist. Tuscarawas No. 2011AP020009, 2011-Ohio-6889, 2011 WL 6949234; *Blaney v. Kerrigan*, 5th Dist. Fairfield No. 12-CA-86, 1986 WL 8646 (Aug. 4, 1986). "Excusable neglect is not present if the party seeking relief could have prevented the circumstances from occurring." *Maggiore v. Barensfeld*, 5th Dist. Stark Nos. 2011CA00180, 2011CA00230, 2012-Ohio-2909, 2012 WL 2415184; *Stevens v. Stevens*, 5th Dist. Fairfield No. 16-CA-17, 2016-Ohio-7925.

**{¶58}** Based on the foregoing, we find that the trial court did not err in denying appellants' 60(B) motion for relief for judgment.

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

III.

**{¶60}** In their third assignment of error, Appellants argue the trial court erred in awarding damages beyond those authorized by statute. We disagree.

**{¶61}** Appellants herein argue that the only damages available under ERISA were damages for back pay and medical bills. Appellants maintain that the damages awarded by the trial court for compensatory damages, full medical bills, front pay/diminution of wages, and punitive damages were improper.

**{¶62}** Initially we note that Appellants failed to answer the Complaint in this matter and failed to show and/or defend at the damages hearing. The place for Appellants to contest whether, and to what extent, they are liable to Appellee in damages is in the court where the civil action was filed.

**{¶63}** We further find Appellants did not file objections to the Magistrate's Decision on Attorney fees as required by Civ.R. 53. We therefore agree with Appellee that Appellants have waived their right to appeal the magistrate's decision and the trial court's adoption of the same.

**{¶64}** As we explained in *Lemon v. Lemon*, 5th Dist. Stark No. 2010CA00319, 2011-Ohio-1878, ¶ 63-64:

**{¶65}** Civ.R. 53(D)(3)(b)(iv) provides that "[a] party shall not assign as error on appeal the court's adoption of any factual findings or legal conclusion * * * unless the party has objected to that finding or conclusion * * *." *See, e.g., Stamatakis v. Robinson* (January 27, 1997), Stark App.No. 96CA303; *Kademenos v. Mercedes-Benz of North America, Inc.* (March 3, 1999), Stark App. No. 98CA50.

**{¶66}** Civ.R. 53(D)(3)(b)(iv) further provides: "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)."

**{¶67}** However, the plain error doctrine is not favored and may be applied only in the extremely rare case involving exceptional circumstances where error, to which no objection was made at the trial court, seriously affects the basic fairness, integrity, or public reputation of the judicial process, thereby challenging the legitimacy of the underlying judicial process itself. *Dorsey v. Dorsey*, Fifth Dist. App.No. 2009-CA-00065, 2009-0hio-4894; *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 679 N.E.2d 1099, 1997-0hio-401, at syllabus.

**{¶68}** Based upon the failure of Appellants to object to the magistrate's decision, and our failure to find any plain error, we reject Appellants' third assignment of error and hereby overrule same.

**{¶69}** The judgment of the Court of Common Pleas, Stark County, Ohio, is affirmed.

By: Wise, J.

Gwin, P. J., and

Delaney, J., concur.

*/s/John W. Wise*
HON. JOHN W. WISE

*/s/ W. Scott Gwin*
HON. W. SCOTT GWIN

*/s/ Patricia D. Delaney*
HON. PATRICIA D. DELANEY

JWW/d 0702

*Appendix F*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

---

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

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CASE NO. 2015CV02169

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JUDGMENT ENTRY

Entered: 12-7-2015

For good cause shown Plaintiff Rhonda Meadows' Motion for Default Judgment is hereby granted. A damage hearing is scheduled for Dec 29th, 2015.

*/s/ John G. Haas*
Judge John G. Haas

*Appendix G*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

CASE NO. 2015CV02169

MAGISTRATE'S DECISION/JUDGMENT ENTRY

Entered 8-25-2016

This matter came on for consideration upon a Motion for Relief from Judgment pursuant to Civil Rule 60(B), which motion was filed by Defendant Jackson Ridge Rehabilitation and Care and Providence Healthcare Management, Inc. Plaintiff filed a brief in opposition to Defendants' motion. The Court conducted an evidentiary hearing on Defendants' motion and a decision is hereby rendered.

This lawsuit was filed on October 16, 2015. Plaintiff's Complaint alleges claims against Defendants for violation of ERISA, breach of contract, and bad faith. These claims arise out of Plaintiff's

termination of employment from Jackson Ridge. Per the Complaint, Plaintiff required immediate surgery and requested leave time which was allegedly denied by Defendants. Additionally, Plaintiff alleges claims for violation of ERISA and breach of contract due to Defendants allegedly cancelling Plaintiff's health insurance notwithstanding the fact Plaintiff paid her payroll deductions for her coverage through July.

Defendants maintain that Plaintiff was provided with a Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation of health insurance coverage form by her insurance carrier which would that applied retroactively to provide her with health insurance coverage from the date of her termination.

**Jurisdiction Over Providence**

Providence argues that the Court has no jurisdiction over it because it had not been properly served by Plaintiff when default judgment was entered. The Court disagrees.

Plaintiff served Jackson Ridge as a registered trade name of Gaslite Leasing, LLC. After examining the filings with the Ohio Secretary of State, and attempted to serve Providence at the registered address. Defendants acknowledge that they had actual knowledge of the filing of the Complaint.[1]

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[1] See Affidavit of Laurie Urbanowicz.

**Registered Trade Name**

Jackson Ridge is a registered trade name owned by Gaslight Leasing, LLC. Defendants argue that any judgment against Jackson Ridge is void because an action can only be commenced against the corporate entity.

Courts have held that R.C. 1329.10(C) permits suits against parties named only by their fictitious names.[2] This is especially true when the interested parties had actual notice of the suit.

Plaintiff served Jackson Ridge c/o Gaslight Leasing, LLC. Once again, Defendants had actual knowledge of the filing of the Complaint. They cannot now avoid liability and "profit from the confusion resulting from its having done business under a fictious name."[3]

**Civil Rule 60(B)**

Defendants request relief from judgment pursuant to Civ. R. 60(B)(1) and Civ. R. 60(B)(5).

Ohio Civil Rule 60(B) states in pertinent part:

> On motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment, order, or

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[2] *Family Medicine Foundation, Inc. v. Bright*, 96 Ohio St.3d 183, 2002-Ohio-4043; *Zinn v. Pine Haven* (Aug. 12, 1982), Tuscarawas App. No. 1578, 1992WL11268.
[3] *Bright*, supra, quoting *Zinn*.

> proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time for a new trial under Rule 59(B); (3) fraud, misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment."

The movant must make more that bare allegations that he or she is entitled to relief.[4]

The Fifth District Court of Appeals reiterated the standard for a Civ. R. 60(B) motion:[5]

> [I]n order to prevail on a motion pursuant to Civ.R.60(B), " * * * the movant must demonstrate that: (1) the party has a meritorious defense or claim present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds for relief are Civ.R. 60(B)(1), (2) or (3), not more than one year after the judgment, order or

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[4] *Kay v. Marc Glassman, Inc.* (1996), 76 Ohio St.3d 18.

[5] *Leisure v. State Farm Mutual Automobile* (1998), 1998 WL 753195 (Ohio App. 5th Dist.). *See also, Donovan v. Middleton* (1998), 1998 WL 172854 (Ohio App. 5th Dist.)

> proceedings was entered or taken." *Argo Plastic Products Co. v. Cleveland* (1984), 15 Ohio St.3d 389, 391, 474 N.E.2d 328, citing *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113, paragraph two of the syllabus.

Additionally, these three requirements are independent and are to be read in the conjunctive, not the disjunctive.[6] All three elements must be established in order to prevail on a Civ. R.60(B) motion.[7]

**Meritorious Defense**

The Court finds that Defendant has presented a meritorious defense. In setting forth a meritorious defense, a defendant need not establish that his defense will be ultimately successful.[8]

Specifically, Defendant asserts that Plaintiff was an at-will employee and that she was provided with a COBRA coverage form which form she did not complete. Defendant also denies that Plaintiff was charged to for health benefits that she did not receive.

**Mistake, Inadvertence, and Excusable Neglect**

Jackson Ridge was served with the Summons and Complaint on October 23, 2015. Accordingly, Jackson

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[6] *GTE* at 151.

[7] *Mount Olive Baptist Church v. Pipkins Paints* (1979), 64 Ohio App.2d 285, 287.

[8] *CB Group, Inc. v. Starboard Hospitality, LLC*, 8th Dist. No. 93387, 2009-Ohio-52.

Ridge was required to move or to otherwise plead on or before November 20, 2015. Upon receipt of the Complaint, Jackson Ridge's Administrator, Paul Deutsch, sent the Complaint to Providence for submission to defense counsel. Providence then forwarded the Complaint to defense counsel who, according to Human Resources director Laura Urbanowicz, indicated he would defend this this lawsuit on behalf of Jackson Ridge. Due to miscommunication, Jackson Ridge was under the mistaken belief that counsel had filed an Answer. Upon receipt of Plaintiff's Motion for Default Judgment, Jackson Ride hired new counsel.

Excusable neglect does not include a party's own carelessness, inattention or willful disregard of the process of the court.[9] Gross carelessness is not enough.[10] Further, under 60(B), excusable neglect requires more than the failure of an attorney to file the necessary documents.[11]

Finally, Jackson Ridge has not established "any other reason justifying relief form the judgment" under Civ.R. 60 (B)(5).

Because Jackson Ridge did not establish that it is entitled to relief from judgment for mistake,

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[9] *Vanest v. Pillsbury Co.* (1997), 124 Ohio App.3d 525, 536.

[10] *See, State v. The Bug Inn* (April 5, 1991), Miami App. No. 90CA23, quoting Wright & Miller, Federal Practice and Procedure, Vol. 11, Section 2858.

[11] See, Pamela Kovalchik, Applee v. Dominic Fallucco dba Dominic's Automotive Service, 9th Dist. No.16670 (1994).

inadvertence, and excusable neglect, there is no need to address the other elements under Rule 60(B).

Accordingly, it is hereby

**ORDERED, ADJUDGED and DECREED** that Defendants' motion for relief from judgment is **DENIED.**

**IT IS SO ORDERED.**

**IT IS SO ORDERED.**

*/s/ Natalie R. Haupt*

**MAGISTRATE NATALIE R. HAUPT**

**Adopted and Approved:**

*/s/ John G. Haas*

**JOHN G. HAAS, JUDGE**

**NOTICE TO THE PARTIES:**

A party shall not assign as error on appeal the Court's adoption of any factual or finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that

factual finding  or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey

*Appendix H*

I IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE,
et al.
Defendants

CASE NO. 2015CV02169

JUDGMENT ENTRY

Entered: 4-26-2017

This matter came on for consideration upon Defendants' Motion to Dismiss for Want of Jurisdiction. Plaintiff filed a Response.

**Procedural History**

Plaintiff, Rhonda Meadows, filed a Complaint for violation of her rights under ERISA. Generally, Plaintiff alleges that her employment at Jackson Ridge Rehabilitation and Care ("Jackson Ridge") was terminated on June 25, 2015 because she needed to

use the health insurance benefits afforded by the facility's health insurance plan.

The Complaint was served on Jackson Ridge on October 23, 2015. Jackson Ridge failed to timely file an Answer to the Complaint, resulting in default judgment being rendered against the facility.

The Court overruled Defendants' Motion to file Answer Out of Time and Motion for Relief for Judgment. The Court set the matter for a hearing on damages. On the eve of the hearing date, Defendants filed the instant motion.

## Jurisdiction and Preemption

Defendants move this Court to dismiss Plaintiffs claims on the basis that this Court lacks jurisdiction. Specifically, Defendants maintain that, because Plaintiff has asserted claims under Section 510 of the Employee Retirement Income Security Act of 1974 ("ERISA"), only the federal courts have jurisdiction.

It is true that state law insurance claims are preempted by the regulatory framework of ERISA. However, federal preemption does not preempt federal claims over which the state court has concurrent jurisdiction.

Preemption is a different from jurisdiction. Typically, ERISA preempts state law when (1) the state law is specifically designed to affect employee benefits; (2) the state law and common law claims are for the recovery of an ERISA plan benefit; (3) ERISA provides a specific remedy; and (4) state laws and common law claims provide remedies for misconduct

growing out of ERISA plan administration. See *Halley v. Ohio Co.*, 107 Ohio App.3d 518 (8th Dist. 1995).

ERISA preemption does not mean, however, that state courts do not have jurisdiction to hear federal claims regarding benefits due under ERISA. Here, Plaintiff is attempting to recover benefits she believes are due her under the plan.

The Fifth District Court of Appeals has interpreted 29 U.S.C. (a)(1)(B) to mean that the common pleas court has concurrent jurisdiction over the claims for denial of benefits. In *Melesky v. Summa Care,* Inc., the 5th District found that the common pleas court had concurrent jurisdiction over a case were the insurer cancelled the plan instead of paying
Plaintiff's claims.

Likewise, this Court has concurrent jurisdiction to hear Plaintiff's claims.

Accordingly, it is hereby

**ORDERED, ADJUDGED and DECREED** that Defendants' Motion to Dismiss is **DENIED. The Court hereby schedules a damages hearing for May 18, 2017 at 10:00 a.m.**

**IT IS SO ORDERED.**

*/s/ John G. Haas*
**JOHN G. HAAS, JUDGE**

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey

*Appendix I*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

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CASE NO. 2015CV02169

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MAGISTRATE'S DECISION/JUDGMENT ENTRY

Entered: 6-21-2017

This matter came on for consideration upon a damages hearing held on May 18, 2017. Plaintiff appeared for the hearing represented by counsel. Defendants did not appear.

Upon review of the record, the testimony of the Plaintiff, the evidence presented at the hearing as to damages, this Court,

**FINDS** that Defendants have admitted to liability.

**FINDS** that the Plaintiff presented evidence in support of an award of Monetary Damages consisting of actual damages, pain and suffering, and punitive damages.

**FINDS** that after consideration, the Court concludes that the Plaintiff has proven, by a preponderance of the evidence, relating to the Actual Damages issue that she is entitled to Monetary Damages as follows:

**Damages:**

| Description of Award | Amount |
|---|---|
| Lost and diminished wages | $32,884.00 |
| Medical bills | $31,473.05 |
| Compensatory | $5,000.00 |
| Punitive Damages | $5,000.00 |
| **Total Damages** | $73,357.05 |

**FINDS** that judgment should be awarded to the Plaintiff against Defendants in the amount of $73,357.05 plus interest at the statutory rate. Costs to Defendants.

**IT IS SO ORDERED.**

*/s/ Natalie R. Haupt*

**MAGISTRATE NATALIE R. HAUPT**

**Adopted and Approved:**

*/s/ John G. Haas*
**JOHN G. HAAS, JUDGE**

**NOTICE TO THE PARTIES:**

A party shall not assign as error on appeal the Court's adoption of any factual or finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey

*Appendix J*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

CASE NO. 2015CV02169

JUDGMENT ENTRY

Entered: 10-5-2017

This matter came on for consideration upon the Magistrate's Decision, which was filed in the instant matter on June 21, 2017. Defendants filed objections and a motion to set aside the Magistrate's Decision. Plaintiff filed a Response. Defendants also filed a supplemental brief.

Upon review of the transcript and the arguments of counsel, the Court finds the objections to be not well taken and **OVERRULES** the same. Additionally, this Court adopts the Magistrate's Decision as a final judgment entry.

**IT IS SO ORDERED.**

*/s/ John G. Haas*
**JOHN G. HAAS, JUDGE**

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey

*Appendix K*

2018 WL 3302171

COURT OF APPEALS OF OHIO, FIFTH DISTRICT, STARK COUNTY.

RHONDA MEADOWS, PLAINTIFFS-APPELLEES/CROSS-APPELLANTS
v.
JACKSON RIDGE REHABILITATION AND CARE, et al, Defendants-Appellants/Cross Appellees

No. 2017CA00207

DATE OF JUDGMENT ENTRY: June 25, 2018

Civil appeal from the Stark County Court of Common Pleas, Case No. 2015CV02169.

**Attorneys and Law Firms**

ROBERT TSCHOLL, 400 South Main Street, North Canton, OH 44720, For Plaintiff-Appellee Cross-Appellant.

G.BRENDA COEY, 29225 Chagrin Blvd., Suite 230, Cleveland, OH 44122, For Defendant-Appellant Cross-Appellee.

JUDGES: Hon. John W. Wise, P.J., Hon. W. Scott Gwin, J., Hon. Earle E. Wise, J.

OPINION

Gwin, J.

***1** { ¶ 1} Defendant-appellants Jackson Ridge Rehabilitation and Care and Providence Healthcare Management, Inc. [collectively "Appellants"] appeal the October 5, 2017 Judgment Entry of the Stark County Court of Common Pleas overruling their objections and motion to set aside a magistrate's opinion that was adopted by the trial court. Appellee-cross-appellant is Rhonda Meadows ["Meadows"].

*Facts and Procedural History*

{ ¶ 2} Meadows is a registered nurse. She was hired by Appellants to be the director of nursing at Jackson Ridge Rehabilitation and Care in September 2014. Jackson Ridge is the registered trade name of Gaslite Leasing, LLC and Providence Healthcare Management is an affiliated management company.

{ ¶ 3} Meadows terms of employment included health care under the employer sponsored health care plan. Meadows took advantage of that offered benefit and began working for Appellants at Jackson Ridge on or about October 17, 2014.

{ ¶ 4} In May 2015, Meadows suffered an acute medical condition and required time off for surgery. Meadows contacted Appellants management regarding her need for surgery. Appellants requested that Meadows wait until the annual survey was completed before surgery was scheduled.

{ ¶ 5} In mid-June 2015, Meadows medical condition became emergent and she returned to her physician. The surgery was scheduled for June 26, 2015. Meadows immediately conveyed to Appellants her need for surgery. Meadows claimed that she was

informed on June 25, 2015 that if she had the surgery she would be terminated from her employment.

{ ¶ 6} Meadows claimed she had the surgery to relive her pain on June 26, 2015. She later learned that not only had Appellants terminated her employment on June 25, 2015, but they had terminated her health care insurance as well, so her surgery and hospital stay were not covered. However, Meadows contended that Appellants continued to deduct health care premiums from her pay, which was shown on her last pay stub on July 3, 2015.

{ ¶ 7} Meadows filed suit on October 16, 2015. On October 23, 2015, Jackson Ridge received service of Meadows' Complaint. Jackson Ridge failed to timely answer, and Meadows moved the Trial Court for default judgment against Appellants on Friday, December 4, 2015. The Trial Court granted default judgment on Monday, December 7, 2015. Jackson Ridge moved the Trial Court for leave to file its Answer instanter on December 11, 2015. Appellants filed a Motion for Relief from Judgment on December 15, 2015. The Trial Court denied these Motions on August 25, 2016, following a hearing conducted by the Trial Court's Magistrate.

{ ¶ 8} On September 9, 2016, the Court set a Damage hearing for October 27, 2016. Immediately on September 23, 2016, Appellant filed a Notice of Appeal with this Court, which was Case No. 2016 CA 00174. On October 24, 2016, this Court dismissed the appeal as not a final appealable order.

{ ¶ 9} The Court again, set a damage hearing for December 16, 2016. On December 15, 2016,

Appellants filed a Motion to Dismiss for Lack of Jurisdiction. The parties briefed the Motion and it was denied on April 26, 2017. The Court set a third damages hearing for May 18, 2017. On May 18, 2017, Appellee and her counsel appeared. Appellants and their counsel did not. The magistrate called the Appellant's attorney, and learned that the attorney had left the firm, and had not updated her address with the Stark County Common Pleas Court or with the Ohio Supreme Court. T. May 18, 2017 at 3-4.

***2** { ¶ 10} The magistrate proceeded with the hearing on May 18, 2017 and entered a decision on June 21, 2017. The Court entered judgment for Meadows and against Appellants in the amount of Seventy-Three Thousand Three Hundred Fifty-Seven 05/100 Dollars ($73,357.05) plus interest. Appellants filed a Motion for Stay and on June 30, 2017, objections to the magistrate's decision. On July 3, 2017, Appellants filed a motion to set aside the judgment of June 21, 2017.

{ ¶ 11} On October 5, 2017, Judge Haas overruled those objections and adopted the Magistrates decision as a final entry.

*Assignments of Error*

{ ¶ 12} Appellants have presented three assignments of error for our consideration:

{ ¶ 13} "I. THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO DECIDE PLAINTIFF-APPELLEE/CROSS-APPELLANT'S CLAIMS.

{ ¶ 14} "II. THE TRIAL COURT ERRED IN GRANTING PLAINTIFF-APPELLEE/CROSS-APPELLANT'S MOTION FOR DEFAULT JUDGMENT AND DENYING DEFENDANTS-APPELLANTS/CROSS-APPELLEE'S MOTION TO SET ASIDE DEFAULT JUDGMENT.

{ ¶ 15} "III. THE TRIAL COURT ERRED IN AWARDING DAMAGES BEYOND THOSE AUTHORIZED BY STATUTE."

{ ¶ 16} Meadows for her cross-appeal raises one assignment of error:

{ ¶ 17} "I. THE TRIAL COURT ERRED BY NOT AWARDING ATTORNEY FEES FOR APPELLEE."

*Jurisdiction of the Court of Appeals*

{ ¶ 18} In the case at bar, we must address the threshold issue of whether the judgment appealed is a final, appealable order. Meadows in her cross-appeal has argued the trial court erred in not awarding her attorney fees.

{ ¶ 19} Even if a party does not raise the issue, this court must address, sua sponte, whether there is a final appealable order ripe for review. *State ex rel. White vs. Cuyahoga Metro. Hous. Aut.*, 79 Ohio St.3d 543, 544, 1997-Ohio-366, 684 N.E.2d 72.

{ ¶ 20} Appellate courts have jurisdiction to review the final orders or judgments of lower courts within their appellate districts. Section 3(B) (2), Article IV, Ohio Constitution. If a lower court's order is not final, then an appellate court does not have jurisdiction to

review the matter and the matter must be dismissed. *General Acc. Ins. Co. vs. Insurance of North America,* 44 Ohio St.3d 17, 20, 540 N.E.2d 266 (1989); *Harris v. Conrad*, 12th Dist. No. CA-2001-12 108, 2002-Ohio-3885. For a judgment to be final and appealable, it must satisfy the requirements of R.C. 2505.02 and if applicable, Civ. R. 54(B). *Denham v. New Carlisle*, 86 Ohio St.3d 594, 596, 716 N.E.2d 184 (1999); *Ferraro v. B.F. Goodrich Co.*, 149 Ohio App.3d 301, 2002-Ohio-4398, 777 N.E.2d 282. If an order is not final and appealable, an appellate court has no jurisdiction to review the matter and it must be dismissed.

{ ¶ 21} In the case at bar, Meadows brought a claim under the Employee Income Retirement Security Act of 1974 [ERISA"]. ERISA authorizes courts in their discretion to award reasonable attorney fees. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147, 105 S.Ct. 3085, 3093, 87 L.Ed.2d 96(1985). *Richland Hosp., Inc. v. Ralyon,* 33 Ohio St.3d 87, 516 N.E.2d 1236, 1239-1240 (1987); Section 1132(g)(1), Title 29, U.S. Code.

{ ¶ 22} Punitive damages may be awarded in tort cases involving fraud, insult or malice. *Columbus Finance, Inc. v. Howard,* 42 Ohio St.2d 178, 183, 327 N.E.2d 654(1975). If punitive damages are proper, the aggrieved party may also recover reasonable attorney fees. Id. Meadows has premised her claim for punitive damages on the alleged intentional and malicious misconduct in accepting her insurance premiums and terminating her employment in an attempt to avoid liability on insurance claims. In the case at bar, the trial court awarded Meadows $5,000.00 in punitive damages.

***3** { ¶ 23} The Ohio Supreme Court has held that when attorney fees are requested in the original pleadings, an order that does not dispose of the attorney-fee claim and does not include a Civ. R. 54(B) determination that there is no just cause for delay is not a final, appealable order. *Internatl. Bd. of Electrical Workers, Local Union No. 8 v. Vaughn Industries, L.L.C.*, 116 Ohio St. 3d 335, 2007– Ohio–6439, 879 N.E. 2d 187, paragraph 2 of the syllabus.

{ ¶ 24} In the case at bar, the trial court held a hearing on damages during which Meadows presented evidence on her attorney fees. T. May 18, 2017 at 32-37. The June 21, 2017 Judgment Entry of the trial court does not mention attorney fees and does not contain a Civ. R. 54(B) determination that there is no just cause for delay. We therefore find that based on the reasoning of the Ohio Supreme Court in *Vaughn, supra*, the judgment appealed from is not a final, appealable order.

{ ¶ 25} The appeal is dismissed.

Wise, John, P.J.,

Wise, Earle, J., concur

**All Citations**

Slip Copy, 2018 WL 3302171, 2018 -Ohio- 2653

*Appendix L*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

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CASE NO. 2015CV02169

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JUDGMENT ENTRY

Entered: 11-6-2018

This matter came on for consideration upon Defendants' Motion for Reconsideration. Plaintiff filed a Response.

Upon review, the Court finds the Motion for Reconsideration to be not well taken and **OVERRULES** the same.

**IT IS SO ORDERED.**

*/s/ John G. Haas*
**JOHN G. HAAS, JUDGE**

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey

*Appendix M*

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

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RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE,
et al.
Defendants

---

CASE NO. 2015CV02169

---

MATISTRATE'S DECISION/JUDGMENT ENTRY

Entered: 12-5-2018

This matter came on for consideration upon a hearing on attorney fees.

In the case at bar, Meadows brought a claim under the Employee Income Retirement Security Act of 1974 ["ERISA"]. ERISA authorizes courts in their discretion to award reasonable attorney fees. *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147, 105 S.Ct. 3085, 3093, 87 L.Ed.2d 96(1985). *Richland Hosp., Inc. v. Ralyon*, 33 Ohio St.3d 87, 516 N.E.2d 1236, 1239-1240 (1987); Section 1132(g)(1), Title 29, U.S. Code. Punitive damages may be

awarded in tort cases involving fraud, insult or malice. *Columbus Finance, Inc. v. Howard*, 42 Ohio St.2d 178, 183, 327 N.E.2d 654(1975).

If punitive damages are proper, the aggrieved party may also recover reasonable attorney fees. *Id.* Meadows has premised her claim for punitive damages on the alleged intentional and malicious misconduct in accepting her insurance premiums and terminating her employment in an attempt to avoid liability on insurance claims. In the case at bar, this court previously awarded Meadows $5,000.00 in punitive damages.

Courts have considered a number of factors in determining whether to grant such fees under ERISA. See, e.g., *Chambless v. Masters, Mates & Pilots Pension Plan*, 815 F.2d 869 (2d Cir. 1987). The Sixth Circuit has adopted a five-factor test to determine whether to award attorney fees under ERISA: (1) the degree of the opposing party's culpability or bad faith; (2) the ability of the opposing party to satisfy an award of attorney fees; (3) whether an award of attorney fees against the opposing party would deter others from acting in similar circumstances; (4) whether the party requesting fees sought to benefit all participants and beneficiaries of an ERISA plan or resolve a significant legal question; and (5) the relative merits of the parties' positions. *Secretary of Dept. of Labor v. King*, 775 F.2d 666, 669, 6 Employee Benefits Cas. (BNA) 2452, 3 Fed. R. Serv. 3d 809 (6th Cir. 1985) (adopting the test used in other circuits). The only guidance provided by the statute for computing the amount of an attorney fee award is that it must be "reasonable." 29 U.S.C.A § 1132(g). *Drennan v. General Motors Corp.*, 977 F.2d 246 (6th Cir. 1992)

Upon review of the record, the testimony of the witnesses, the evidence presented at the hearing as to damages, and considering all five factors, this Court finds that an award of attorney fees is warranted.

After consideration, the Court concludes that the Plaintiff has proven, by a preponderance of the evidence, relating to attorney fees, that she is entitled to reasonable attorney fees as follows:

**Legal Services rendered from 7/17/15 - 11/6/17: $19,000**[1]

The Court finds that fees incurred as part of the appeal should not be included because doing so would, in effect, punish Defendant for exercising its right to appeal.

The Court **FINDS** that judgment should be awarded to the Plaintiff against Defendants in the amount of $19,000.

**IT IS SO ORDERED.**

*/s/ Natalie R. Haupt*
**MAGISTRATE NATALIE R. HAUPT**

**Adopted and Approved:**

*/s/ John G. Haas*
**JOHN G. HAAS, JUDGE**

[1] See Exhibit A from September 10, 2018.

**NOTICE TO THE PARTIES:**

A party shall not assign as error on appeal the Court's adoption of any factual or finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(30)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

Copies to: Atty. Robert J. Tscholl
Atty. G. Brenda Coey