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

ROBERT J. TSCHOLL
400 South Main Street
North Canton, Ohio 44720

For Defendants-Appellants

G. BRENDA COEY
THE COEY LAW FIRM LLC
29225 Chagrin Blvd., Suite 230
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

CASE NO. 2015CV02169

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]

[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

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE, et al.
Defendants

CASE NO. 2015CV02169

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

RHONDA MEADOWS
Plaintiff

v.

JACKSON RIDGE REHABILITATION AND CARE,
et al.
Defendants

CASE NO. 2015CV02169

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

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