

No. 2024-0981

IN THE
SUPREME COURT OF OHIO

THE ESTATE OF ROSE CRNJAK, Deceased, By Lee Crnjak
Plaintiff-Appellee,

vs.

LAKE HOSPITAL SYSTEM, INC., et al.
Defendant-Appellant.

JURISDICTIONAL APPEAL FROM
THE EIGHTH APPELLATE DISTRICT
CASE NO. CA-23-113027

**MEMORANDUM OF *AMICI CURIAE* THE OHIO ASSOCIATION OF CIVIL TRIAL
ATTORNEYS AND THE OHIO HOSPITAL ASSOCIATION IN SUPPORT OF
JURISDICTION**

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I. STATEMENT OF INTEREST OF AMICI CURIAE

The Ohio Association of Civil Trial Attorneys (“OACTA”) is a statewide professional organization whose membership encompasses attorneys, supervisory or managerial employees of insurance companies, and corporate executives of other corporations who devote a substantial portion of their time to the defense of civil damage lawsuits and the management of insurance claims brought against individuals, corporations, and governmental entities. For over fifty years, OACTA has provided a forum where professionals work together to improve the administration of justice in Ohio. OACTA has a strong interest in fairness, certainty, and predictability in Ohio’s civil justice system.

OACTA’s mission is to provide a forum where its members can work together and with others on common problems to propose and develop solutions that will promote and improve the fair and equal administration of justice in Ohio. OACTA strives for stability and consistency in Ohio’s case law and jurisprudence. On issues of importance to its members, OACTA has filed amicus curiae briefs in significant cases before federal and state courts in Ohio advocating and promoting public policy and sharing its perspective with the judiciary on matters that will shape and develop Ohio law.

The Ohio Hospital Association (“OHA”) is a private, nonprofit trade association established in 1915 as the first state level hospital association in the United States. OHA provides a forum for Ohio hospitals to come together and advocate for health care legislation and policy in the best interests of hospitals and their communities. OHA is comprised of 250 hospitals and 15 health systems. OHA’s member hospitals directly employ over 430,000 Ohioans. In 2023, patients had more than 37,700,000 encounters at Ohio hospitals. For more

than 25 years, OHA has been proactive in supporting the interests of their members on civil justice issues.

OACTA's and OHA's appearance as amicus curiae in this case is premised upon the simple concept that a party that does not exist does not have standing to file a lawsuit. OACTA's and OHA's members have an interest in ensuring that Ohio's well-founded case law establishing that only a personal representative of an estate has standing to bring action on behalf of a deceased person is upheld.

In short, a deceased person cannot file a lawsuit, nor can a lawsuit be initiated on behalf of a deceased person when no estate exists. This Court's decisions govern standing requirements for lawsuits sounding in medical negligence, wrongful death, personal injury, product liability, and other substantive areas of law in which OACTA members practice and OHA members are often defendants. The Court is urged to accept this case to provide clarity to Ohio's lower courts, especially since the Eighth District's decision improperly expands the statutes of limitations for such claims by allowing plaintiffs to circumvent statutorily prescribed time limits and simply substitute the correct party later in the case.

OACTA and OHA members have a strong interest in the outcome of this matter. OACTA and OHA urge on behalf of their entire memberships that the decision of the Eighth District Court of Appeals be reversed, and this Court find that Lee Crnjak lacked the requisite standing to file the underlying action as no estate was open for Rose Crnjak's Estate and there was no duly appointed representative at the time of filing this lawsuit.

II. STATEMENT OF PUBLIC INTEREST REGARDING THIS ISSUE

The Eighth District's decision is in direct conflict with the clear statutory requirement that an action on behalf of a deceased person can only be properly brought by the duly appointed

representative of that person's estate in accordance with R.C. 2125.02. It also conflicts with the decisions of other appellate courts, as discussed in greater detail in the substantive "Law and Argument" section of the instant brief. This has established inconsistency in regard to one of the most basic requirements of filing a lawsuit – whether a plaintiff can actually bring the suit.

Further, the Eighth District's decision effectively creates an opportunity to extend the relevant statute of limitations for actions brought on behalf of a deceased person. It establishes a mechanism for a "placeholder" plaintiff aside from the person statutorily prescribed to pursue the interests of the decedent to initiate the suit and then petition the Court to substitute a proper estate representative at any point in the proceedings – even if the statute of limitations has expired. Under the R.C. Chapter 2125, a complaint cannot be filed by a person who is not the estate representative designated by the probate court, and therefore is a legal nullity. The Eighth District's decision, as it stands, allows relation back to a legally null complaint.

Chapter 2125 of the Ohio Revised Code enacted statutory mechanisms to enable a probate court to oversee estate administration. There are explicit, carefully considered requirements that an individual must meet to administer an estate. The Eighth District's decision allows a person to stand in the shoes of an estate representative without meeting any of these requirements, undermining the probate court's authority and the legislative intent of Title 21. It also complicates negotiations and conversations involving the resolution of wrongful death cases, as defendants cannot be sure if they are settling with the correct plaintiff, or if another "estate representative" will later appear.

The Ohio Supreme Court has yet to clarify this issue. *See Klinger v. Corr. Corp. of Am.*, N.D. Ohio No. 4:11 CV 2299, 2012 WL 6200393, *7 (Oct. 23, 2012): ("Upon review of the relevant legal authorities cited to by the parties in their briefs, it is unclear whether, under Ohio

law, Plaintiff's subsequent appointment as personal representative of his father's estate, as alleged in the Fourth Amended Complaint, would relate back to the date of the original Complaint. Indeed, the Ohio Supreme Court has not squarely addressed the issue.”). Unfortunately, it is not uncommon for a person to feel the need to engage in litigation on behalf of a deceased relative or companion. The public has a great interest in establishing clear guidelines and requirements for these actions in order to alleviate confusion and provide clarity to both plaintiffs and defendants in actions involving a deceased individual.

This Court should provide guidance to plaintiffs, defendants, and lower courts with respect to who is the proper individual to bring a lawsuit. It will also quash the uncertainty felt by defendants in cases venued in the Eighth District, despite clear statutory language mandating that an estate be opened. The issue before the Court is not limited to the parties involved in this action. This Court's decision will provide finality regarding this issue that will be of great assistance to parties to similar actions and guide lower courts in their determination of such issues, conserving the resources of all involved in current and future litigation.

III. STATEMENT OF THE FACTS

The relevant facts relating to the present appeal pending before this Court are set forth in Appellant's Merit Brief. Those facts are expressly adopted by reference and incorporated herein.

For purposes of this Amici Curiae Brief, the following facts are most significant:

- Lee Crnjak petitioned the Lake County Probate Court to relieve the Estate of Rose Crnjak from Administration, and thus the Estate was closed on February 27, 2019.
- On May 1, 2020, fourteen months after the Estate was closed, a Complaint purporting to be filed on behalf of “The Estate of Rose Crnjak, Deceased, by Lee Crnjak, Administrator” was filed against Appellant Lake Hospital and other defendants, setting forth survivorship and wrongful death claims, and a claim for punitive damages.

- At the time that this lawsuit was filed, the Estate of Rose Crnjak was not open.
- Lee Crnjak applied to re-open the Estate on January 4, 2021. The Estate was re-opened on January 11, 2021.
- Rose Crnjak's death occurred on November 15, 2018, rendering the expiration date of the statute of limitations for any wrongful death claim as November 15, 2020.
- As admitted by Lee Crnjak at trial, there was no Administrator authorized by the Probate Court to take actions on behalf of the Estate at the time the Complaint was filed.

IV. LAW AND ARGUMENT

Proposition of Law

A Complaint for wrongful death must be filed by the duly appointed representative of the deceased's estate; otherwise, the Plaintiff has neither standing nor capacity to commence the lawsuit.

This case presents the question of whether a claim on behalf of a deceased person can be brought by anyone other than the designated representative of the individual's estate.

An individual must have capacity to sue, a right to litigate the issues set forth in a pleading, in order to bring a legal action on behalf of another. *Eichenberger v. Woodlands Assisted Living Residence, LLC*, 2014 Ohio Misc. LEXIS 16286 (C.P. 2014), *8, citing *Kovacs v. Aetna Life Ins. Co.*, 8th Dist. Cuyahoga No. 65295, 1994 Ohio App. LEXIS 1699 (Apr. 21, 1994) and *Mousa v. Mount Carmel Health Sys.*, 2013-Ohio-2661, ¶ 13 (10th Dist.). A person lacks standing unless he has a real interest in the subject matter of the action, and a person has such an interest if he has suffered an injury by the defendant. *Id.*, citing *State ex rel. Walgate v. Kasich*, 2013-Ohio-946 (10th Dist.). Standing to sue is required to invoke the jurisdiction of the common pleas court in every lawsuit, and standing is to be determined at the commencement of

suit. *Mousa* at ¶ 13 citing *Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St.3d 13, 2012-Ohio-5017, ¶ 24.

It has been well established that a deceased person lacks standing to sue. *Harris v. US Bank Nat'l Ass'n.*, 2021 U.S. App. LEXIS 27433 (6th Cir. Sept. 10, 2021), quoting *LN Mgmt., L.L.C., JPMorgan Chase Bank, N.A.*, 957 F.3d 943, 950 (9th Cir. 2020) (Emphasis sic.) (“[I]t is ‘self-evident’ that ‘a dead person, *qua* a dead person (as opposed to the dead person's estate * * *) cannot sue, be sued, or be joined to a lawsuit.”); *see also Simms v. Alliance Community Hosp.*, 2008-Ohio-847, ¶ 22 (5th Dist.): (“[I]f a plaintiff is deceased at the time the complaint is filed, it is a nullity.”).

Pursuant to R.C. 2125.02, “a civil action for wrongful death shall be brought in the name of the personal representative of the decedent * * *.” R.C. 2125.02(A)(1); *see also Ramsey v. Neiman*, 69 Ohio St.3d 508, 512 (1994) (“A cause of action in wrongful death arising under R.C. Chapter 2125 must be brought in the name of a person appointed by a court to be the administrator, executor, or personal representative of the decedent’s estate.”). Additionally, a survival action is also prosecuted by the personal representative of the decedent’s estate. *Peters v. Columbus Steel Castings Co.*, 115 Ohio St.3d 134, 2007-Ohio-4787, ¶¶ 10-12. Accordingly, the **only** proper plaintiff in such an action is the estate administrator or representative. It therefore stands to reason that when an existing estate is closed by a probate court pursuant to R.C. 2113.03, an individual’s status as the representative of the estate is immediately terminated. *Beery v. Turner*, 2009-Ohio-6832 (4th Dist.). *See also, Wanamaker v. Davis*, 2007-Ohio-4340, ¶ 31 (2d Dist.) (“[T]he probate court intended to and did close the estate and terminate appellant’s appointment as executrix of the estate * * *.”); *Beery v. Turner*, ¶ 35 (“Because John Turner’s

estate was released from administration, the trial court below mistakenly referred to Bert as the ‘executor’ of John Turner’s estate.”).

Relevant to the matter at hand, R.C. 2125.02 provides that, “a civil action for wrongful death shall be commenced **within two years** after the decedent’s death.” (Emphasis added.) R.C. 2125.02(D)(1). Further, R.C. 2305.113 provides that, “an action upon a medical * * * claim shall be commenced **within one year** after the cause of action accrued.” (Emphasis added.) R.C. 2305.113(A). Though it may be suggested that an estate formed subsequent to the filing of an action could be properly substituted under the doctrine of relation back in accordance with Civ. R. 15(C), Ohio courts have established this is not the case. Allowing an improper party under the statute to commence a lawsuit on behalf of a decedent and later open (or, in this case, reopen) the estate provides an opportunity for a Plaintiff to game the system and circumvent the applicable statute of limitations and effectively grants an extension of time not recognized by Ohio law to establish an estate and bring suit.

Demonstrative of both the requirement of a proper estate representative to establish standing as well as the rejection of the notion that the proper party can be substituted later in the litigation is the Fifth District’s decision in *Gottke v. Diebold, Inc.*, 5th Dist. Licking No. CA-3484, 1990 Ohio App. LEXIS 3564 (Aug. 9, 1990). In *Gottke*, the Court ultimately affirmed the trial court’s dismissal of the plaintiff’s complaint as to the defendant Diebold, Inc., finding that the action was time barred. *Gottke, supra*, at *11-12. Diane Gottke filed a wrongful death and survivorship action as personal representative of the estate of Teresa Jocz against Diebold and Chesterton. *Id.* at *1. However, when the complaint was filed, Diane Gottke was not the executor of the decedent’s estate. *Id.* at *2. Several weeks after the complaint was filed, the trial court granted default judgment against Chesterton for its failure to answer or otherwise plead. *Id.*

Thereafter, the probate court reopened the estate and appointed Diane Gottke as the successor administrator of the decedent's estate. *Id.* Plaintiff then filed a first amended complaint substituting Diane Gottke as the successor administrator of the decedent's estate. *Id.* In response, Chesterton moved to vacate the default judgment and Diebold moved to dismiss the action due to the plaintiff's lack of standing to file the action. *Id.* at *2-3. The trial court granted both defendants' motions and dismissed the action. *Id.* at *3. In light of the trial court's findings, the plaintiff appealed asserting that the trial court erred in granting Diebold's motion to dismiss and vacating the plaintiff's default judgment against Chesterton. *Id.*

In its opinion, the appellate court found that at the time the action was filed, the plaintiff lacked standing to file the action. *Id.* at *4-5. The plaintiff contended that the doctrine of relation back saved the proceedings when the plaintiff acquired standing and amended the complaint. However, the appellate court concluded as follows:

[A]n action for wrongful death must be brought in the name of the personal representative of the decedent; Civ. R. 17 may not be used to, in effect, extend the applicable statute of limitations; and **the doctrine of relation back does not apply where the plaintiff misrepresents his/her capacity, and fails to procure appointment within the time prescribed by the appropriate statute of limitations**, or file "in the name of" the personal representative. (Emphasis added.)

Id. at *6.

The appellate court in *Gottke* further found that the plaintiff had "ample opportunity" to file the action in the name of the personal representative and correct the deficiency. *Id.* at *10-11. The appellate court affirmed the trial court's dismissal of the action as to Diebold, finding that the applicable one-year statute of limitations had expired. *Id.* at *11. Additionally, the appellate court affirmed the trial court in vacating the default judgment against Chesterton. *Id.* However,

the trial court reversed the trial court's dismissal of the action as to Chesterton as the two-year statute of limitations for wrongful death had not yet expired. *Id.* at *11-12.

Other Ohio courts have similarly held that the doctrine of relation back does not save an action when the plaintiff initially lacked standing to sue and the applicable statute of limitations has expired. *See Eichenberger, supra*, at *12-13 (“The doctrine of relation back cannot be used to circumvent the applicable statute of limitations when Plaintiffs standing to originally bring the suit rests upon a misrepresentation to the Court.”) *Estate of Newland v. St. Rita's Med. Ctr.*, 2008-Ohio-1342, ¶ 22 (3d Dist.) (“[I]f we were to grant a remand to the trial court it appears as though, under the weight of authority, the Estate would be unable to defeat the statute of limitations for filing this action. * * * Specifically, [*Levering v. Riverside Methodist Hosp.*, 2 Ohio App.3d 157 (10th Dist.1981) and *Simms v. Alliance Community Hosp.*, 2008-Ohio-847 (5th Dist.)] suggest that the filing date of any new amended complaint in this case would not relate back to the filing date of the original complaint because the original complaint was brought in the name of Betty Newland, who was deceased at the time of filing, and the complaint therefore has remained a nullity from its inception.”); *see also Mohat v. Mentor Exempted Village School Dist. Bd. of Edn.*, N.D. Ohio No. 1:09 CV 688, 2011 U.S. Dist. LEXIS 58319, *15 (June 1, 2011) (“This Court, therefore, finds that because the estate itself was not properly established and no duly appointed representative existed prior to the expiration of the statute of limitations, the estate's claims are barred under the two year statute of limitations.”). Clearly, an action filed by a party who lacks standing is a jurisdictional nullity, and therefore there is no valid complaint to potentially relate back to.

In addition to lacking standing, non-administrator plaintiffs lack capacity to sue on behalf of a deceased individual. Capacity to sue involves a determination as to whether an individual

may properly sue, either as an entity or on behalf of another. Thus, an individual that is not the personal representative of an estate lacks capacity to bring a wrongful death and/or survival action on behalf of the estate. *See Eichenberger, supra*, at *7 (“Defendants contend that because Mr. Eichenberger had not been appointed as the personal representative of Ms. Eichenberger’s Estate by the Franklin County Probate Court as of the date of the filing of this lawsuit, Mr. Eichenberger lacks the capacity to bring this lawsuit. * * * This Court agrees.”); *Estate of Bing v. City of Whitehall*, 373 F.Supp.2d 770, 785-786 (S.D.Ohio 2005) (dismissing the wrongful death claims because they were not brought by the estate’s administrator), *rev’d in part on other grounds*. As such, plaintiffs other than the duly appointed administrator of an estate cannot bring a lawsuit on behalf of a decedent, both with respect to standing as well as capacity. Whether a court chooses to consider this issue in terms of standing or capacity, the same result adverse to a non-administrator plaintiff is reached.

The decision of the Eighth District, if left undisturbed, will have a resounding and negative impact on all defendants in actions where the plaintiff is deceased by virtue of the “loophole” created by the Eighth District, which now permits plaintiffs to skirt the requirement of timely opening an estate to represent a decedent’s interests and timely filing a complaint within the applicable statute of limitations. This is not the law of Ohio, and this Court should close this dangerous, judicially-created workaround by reversing the Eighth District’s decision herein.

The Eighth District’s decision creates, rather than solves, practical problems. For instance, it allows situations where multiple plaintiffs could purport to be acting “on behalf of the estate,” potentially subjecting defendants to multiple lawsuits from different individuals “on behalf of the estate,” multiple requests for medical records or other discovery from multiple

individuals “on behalf of the estate,” and multiple demands for settlement from multiple individuals “on behalf of the estate.” There are myriad other examples of situations where, if the Eighth District’s decision is allowed to stand, defendants will be unable to discern who, in fact, is acting on behalf of the estate. If a defendant wants to settle a case, how can the defendant know it is negotiating with the person who has authority to enter into a settlement agreement, and how can a defendant know that if the settlement agreement is entered into that it will not be sued for the same wrong by someone else when nobody has authority to do so as the personal representative of the decedent’s estate? For all of these reasons, OACTA and the OHA urge this Court to accept this case for review and overturn the erroneous decision of the Eighth District Court of Appeals.

V. CONCLUSION

For all the forgoing reasons, Amici Curiae request that this Court reverse the decision of the Eighth District Court of Appeals below and find that this matter was a jurisdictional nullity since Lee Crnjak lacked standing to file this action on behalf of Rose Crnjak’s estate.

Respectfully submitted,

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