

## SUPREME COURT OF OHIO

# Fletcher v. University Hospitals of Cleveland

120 Ohio St. 3d 167 (Ohio 2008) · Decided October 23, 2008

### SUMMARY

The Ohio Supreme Court held that a plaintiff's failure to attach the affidavit of merit required by Ohio Civ.R. 10(D)(2) is properly addressed by a motion to dismiss under Civ.R. 12(B)(6), rather than a motion for a more definite statement. The court further held that dismissal for this failure is otherwise than on the merits and must therefore be without prejudice. The judgment of the court of appeals was reversed and the case was remanded.

### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Ohio                                                                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | O'Connor, J.; Moyer, C.J.; Pfeifer, J.; Lundberg Stratton, J.; Lanzinger, J.; Cupp, J.; O'Donnell, J.                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | October 23, 2008                                                                                                                                                                                                                                                                                                                                                                                                                 |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                                                                                                            |
| PROCEDURAL POSTURE    | Defendants appealed from an appellate judgment reversing the trial court's dismissal of a medical-malpractice and wrongful-death complaint. The Supreme Court of Ohio accepted jurisdiction to decide whether failure to attach a Civ.R. 10(D)(2) affidavit of merit requires a Civ.R. 12(B)(6) dismissal or a Civ.R. 12(E) motion for a more definite statement, and whether the dismissal should be with or without prejudice. |
| STANDARD OF REVIEW    | De novo review of a Civ.R. 12(B)(6) dismissal; the motion tests the legal sufficiency of the complaint.                                                                                                                                                                                                                                                                                                                          |
| PRECEDENTIAL VALUE    | binding                                                                                                                                                                                                                                                                                                                                                                                                                          |
| PARTIES               | University Hospitals of Cleveland, Raymond Onders, M.D. v. Monica Fletcher                                                                                                                                                                                                                                                                                                                                                       |

### TOPICS

medical malpractice

pleadings

motions to dismiss

motion for a more definite statement

civil procedure

## PRACTICE AREAS

civil procedure

medical malpractice

health law

wrongful death

## QUESTIONS PRESENTED

1. Whether a plaintiff's failure to attach the affidavit of merit required by Civ.R. 10(D)(2) subjects the complaint to dismissal under Civ.R. 12(B)(6) or instead requires a Civ.R. 12(E) motion for a more definite statement.
2. Whether dismissal of a complaint for failure to attach a Civ.R. 10(D)(2) affidavit of merit is with prejudice or without prejudice.

## HOLDINGS

1. A defendant must respond to a plaintiff's failure to attach the affidavit of merit required by Civ.R. 10(D)(2) with a motion to dismiss under Civ.R. 12(B)(6), not a motion for a more definite statement under Civ.R. 12(E).
2. Dismissal for failure to comply with Civ.R. 10(D)(2) is an adjudication otherwise than on the merits and must be without prejudice.

## KEY QUOTATIONS

*“For the following reasons, we hold that the proper response to the failure to file the affidavit required by Civ.R. 10(D)(2) is a motion to dismiss filed under Civ.R. 12(B)(6).”* (at 169)

*“A dismissal for failure to state a claim is without prejudice except in those cases where the claim cannot be pleaded in any other way.”* (at 171)

*“However, a dismissal for failure to comply with Civ.R. 10(D)(2) is an adjudication otherwise than on the merits. The dismissal, therefore, is without prejudice.”* (at 171)

## FACTUAL BACKGROUND

Monica Fletcher brought medical-malpractice and wrongful-death claims alleging that medical care provided to Victor Shaw was negligent and substandard and caused his death. After voluntarily dismissing an earlier action, Fletcher refiled the case after Civ.R. 10(D)(2) had taken effect. The refiled complaint contained a medical claim but was not accompanied by the required affidavit of merit.

## PROCEDURAL HISTORY

Fletcher initially filed suit in the Mahoning County Court of Common Pleas, voluntarily dismissed it without prejudice, and refiled in the Cuyahoga County Court of Common Pleas. The trial court granted University Hospitals' Civ.R. 12(B)(6) motion and dismissed the complaint with prejudice. The Eighth District reversed, holding that the proper remedy was a motion for a more definite statement. The Supreme Court of Ohio reversed the appellate court and remanded for entry of a dismissal without prejudice.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Reverse the judgment of the court of appeals and remand to the trial court to enter an order dismissing the case without prejudice.

## CASES CITED

- Point Rental Co. v. Posani, 52 Ohio App. 2d 183, 185-186, 6 O.O.3d 171, 368 N.E.2d 1267 (1976)
- Byrd v. Faber, 57 Ohio St. 3d 56, 60-61, 565 N.E.2d 584 (1991)
- Mitchell v. Lawson Milk Co., 40 Ohio St. 3d 190, 193, 532 N.E.2d 753 (1988)
- State ex rel. Hanson v. Guernsey County Board of Commissioners, 65 Ohio St. 3d 545, 548, 605 N.E.2d 378 (1992)
- Thomas v. Freeman, 79 Ohio St. 3d 221, 225 n.2, 680 N.E.2d 997 (1997)
- Collins v. National City Bank, 2d Dist. No. 19884, 2003-Ohio-6893, 2003 WL 22971874, ¶ 51
- LaNeve v. Atlas Recycling, Inc., 119 Ohio St. 3d 324, 2008-Ohio-3921, 894 N.E.2d 25, ¶ 21
- State ex rel. Zollner v. Industrial Commission, 66 Ohio St. 3d 276, 278, 611 N.E.2d 830 (1993)