APPENDIX

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APPENDIX A

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STEPHANIE SMITH,
Appellant,

- vs –

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,
Appellees.

COURT OF APPEALS FILED MAY – 5 2025 ALLEN M. FREEMAN CLERK CLERMONT COUNTY, OH

CASE NO. CA2024-02-010
JUDGMENT ENTRY

The assignments of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clermont County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

s/ Robert A. Hendrickson
Robert A. Hendrickson, Presiding Judge

s/ Mike Powell
Mike Powell, Judge

s/ Matthew R. Byrne
Matthew R. Byrne, Judge

APPENDIX B

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STEPHANIE SMITH,
Appellant,

- vs –

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,
Appellees.

COURT OF APPEALS FILED MAY – 5 2025 ALLEN M. FREEMAN CLERK CLERMONT COUNTY, OH

CASE NO. CA2024-02-010
OPINION
5/5/2025

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case No. 2023 CVA 00692

Rittgers, Rittgers & Nakajima, and Lindsay A. Lawrence and Joseph W. Shea III; Flowers & Grube, and Louis E. Grube and Kendra Davitt, for appellant.

Rendigs, Fry, Kiely & Dennis, L.L.P., and C. Jessica Pratt, for appellee, Mercy Health-Clermont Hospital, LLC.

Calderhead, Lockemeyer & Peschke, and Joshua F. DeBra, for appellees, EMG of Cincinnati, LTD and Samantha Yelley, D.O.

Frost Brown Todd, LLC, and Maureen A. Bickley and Kaitlyn Hawkins-Yokley, for appellee, Laboratory Corporation of America Holdings.

HENDRICKSON, P.J.

{¶ 1} Appellant, Stephanie Smith, appeals the dismissal of her medical-negligence claims on statute-of-limitations grounds. She argues that federal law tolled the limitations period. For the reasons that follow, we affirm the trial court's dismissal.

I. Factual and Procedural Background

{¶ 2} On October 26, 2019, Smith sought treatment in the emergency department at Mercy Health-Clermont Hospital ("Mercy Clermont") for left knee pain. Following discharge, she was instructed to consult her primary-care physician. Five days later, on October 31, Smith followed these instructions and visited Dr. Roger Chang at HealthSource of Ohio. During this appointment, an employee of Laboratory Corporation of America Holdings ("LabCorp") attempted, without success, to draw Smith's blood. Later that same day, Smith discovered a hardened knot on her arm where LabCorp's employee had tried to draw blood, which progressively worsened and became increasingly painful. This development prompted her return to Mercy Clermont's emergency department, where she received care from Dr. Samantha Yelley. Smith was diagnosed with "an injury of the right brachial artery at high risk for compartment syndrome and intramuscular hematoma." The following day, November 1, 2019, Smith underwent surgical exploration and repair of her right brachial artery at a different medical facility. Following eight days of inpatient care, she was discharged on November 9, 2019. Smith alleges that negligent treatment by Mercy Clermont, Dr. Chang, HealthSource, LabCorp, Dr. Yelley, and others resulted in compartment syndrome and permanent functional impairment of her right arm.

{¶ 3} On October 23, 2020—mere days before the one-year statute of limitations for medical claims under R.C. 2305.113(A) would expire—Smith filed a complaint in the Clermont County Court of Common Pleas. This action named multiple defendants: Mercy Clermont, LabCorp, Dr. Yelley, Emergency Medicine Physicians of Cincinnati, Ltd. ("EMP"), HealthSource, and Dr. Chang. The complaint alleged various claims of medical negligence.

{¶ 4} The Public Health Service ("PHS") Act establishes the Federal Tort Claims Act ("FTCA") as the exclusive remedy against the United States for personal injuries resulting from medical services performed by PHS employees acting within their scope of employment. *See Bray v. Bon Secours Mercy Health, Inc.*, 97 F.4th 403, 406 (6th Cir. 2024), citing 42 U.S.C. 233(a). Under the Federally Supported Health Centers Assistance Act ("FSHCAA"), healthcare entities receiving federal funds under the PHS Act, together with their employees, are "deemed" PHS employees for purposes of malpractice liability. When FSHCAA applies, the United States substitutes itself as the defendant, and litigation proceeds according to the FTCA's provisions. The FTCA imposes an administrative-exhaustion requirement, mandating that plaintiffs file an administrative claim with the appropriate federal agency before initiating litigation. *See* 28 U.S.C. 2675(a). HealthSource qualified as a covered community health center under the FSHCAA, rendering the FTCA Smith's exclusive remedy against both HealthSource and Dr. Chang.

Accordingly, on October 21, 2020, Smith submitted an administrative claim to the Department of Health and Human Services ("HHS").

{¶ 5} On January 26, 2021, the United States removed the case to federal court ("Case 1"). *See* 28 U.S.C. 1442(a)(1) (removal statute). The United States then substituted itself as defendant for claims against HealthSource and Dr. Chang. On March 29, 2021, the United States moved to dismiss Case 1, contending that Smith had failed to satisfy the FTCA's administrative-exhaustion requirement. By April 15, 2021, Smith's administrative claim had been constructively denied, as HHS had taken no action for six months. *See* 28 U.S.C. 2675(a). In an effort to comply with the FTCA's exhaustion requirement, Smith filed a second action in federal court on September 3, 2021, asserting identical claims against the same defendants ("Case 2"). Contemporaneously, she moved to consolidate Cases 1 and 2. On September 7, 2021, Smith filed her first amended complaint in Case 2, jettisoning the state-court defendants and narrowing the case to claims against only the United States. The district court declined to consolidate the two cases but did transfer Case 2 to the same judge who was presiding over Case 1.

{¶ 6} On November 17, 2021, the parties participated in a status conference with the district court, during which both the United States's motion to dismiss and Smith's motion to consolidate were discussed. The parties reached an agreement whereby Case 1 would be dismissed and Smith would file an amended complaint in Case 2 to reintroduce the state-court defendants. Consequently, on January 3, 2022, Case 1 was dismissed by stipulated order. Smith then filed a second amended complaint in Case 2 on January 14, 2022, reinstating claims against all original defendants, including Mercy Clermont, LabCorp, Dr. Yelley, and EMP.

{¶ 7} Following additional litigation and discovery, Smith moved to dismiss the United States from Case 2, which the district court granted on May 1, 2023. With the federal defendant no longer party to the action, the district court declined to exercise supplemental jurisdiction over Smith's remaining state-law claims. *See* 28 U.S.C. 1367 (supplemental-jurisdiction statute). On June 20, 2023, after briefing from all parties, the court dismissed Case 2 "without prejudice for refiling in the state court." Smith had requested that the court remand the case to state court, but the district court denied this request, explaining that because Case 2 originated in federal court—rather than having been removed from state court—remand was procedurally impossible.

{¶ 8} On July 13, 2023, Smith filed the present action in the Clermont County Court of Common Pleas, reasserting her medical-negligence claims against Mercy Clermont, LabCorp, Dr. Yelley, and EMP. The defendants moved for dismissal—LabCorp under Civ.R. 12(B)(6), the other defendants under Civ.R. 12(C)—arguing that the statute of limitations had expired well before Smith filed this action, and that she had already used Ohio's savings statute when filing Case 2 in federal court, thereby precluding its use again. Smith responded with the argument that the supplemental-jurisdiction statute, 28 U.S.C. 1367(d), tolled the statute of limitations.

{¶ 9} The trial court agreed with the defendants' position and dismissed all Smith's claims. The court concluded that the one-year statute of limitations had expired in November 2020; that Smith had already invoked Ohio's savings statute when filing Case 2; and that the tolling provision in the federal supplemental-jurisdiction statute was inapplicable because the original limitations period had already lapsed before Case 1 was removed to federal court.

{¶ 10} Smith appealed.

II. Analysis

{¶ 11} Smith presents two assignments of error. She contends that the trial court erred by failing to recognize that 28 U.S.C. 1367(d) tolled the statute of limitations while her claims were pending and erred by declining to apply the relation-back doctrine to her second amended complaint in Case 2.

{¶ 12} The procedural posture of this case requires some attention. The trial court dismissed the claims against LabCorp under Civ.R. 12(B)(6), while dispatching those against Mercy Health, Yelley, and EMP under Civ.R. 12(C). Civ.R. 12(B)(6) permits dismissal when a complaint "fails to state a claim upon which relief can be granted." *Ebbing v. Stewart*, 2016-Ohio-7645, ¶ 11 (12th Dist.). This standard requires that "it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. The Civ.R. 12(B)(6) inquiry is circumscribed, confined to the four corners of the complaint. Civ.R. 12(C), while similar in purpose, differs in scope. Unlike Rule 12(B)(6), which "must be judged on the face of the complaint alone," Rule 12(C) "permits consideration of the complaint and answer." *State ex rel. Midwest Pride IV v. Pontious*, 75 Ohio St.3d 565, 570, 1996-Ohio-459.

{¶ 13} Despite these procedural differences, our standard of review is the same. Dismissals under both Civ.R. 12(B)(6) and Civ.R. 12(C) are reviewed de novo.

See Perrysburg Twp. v. Rossford, 2004-Ohio-4392, ¶ 5 (Civ.R. 12[B][6] dismissals); *White v. King*, 2016-Ohio-2770, ¶ 13 (Civ.R. 12[C] dismissals). Under this standard, we examine the legal questions with fresh eyes, giving no deference to the trial court's conclusions.

{¶ 14} The trial court here expressly noted that it relied solely on Smith's complaint and the four exhibits that she attached to and incorporated in the complaint to reach its dismissal decisions, *see State ex rel. Woods v. Heekin*, 2024-Ohio-1719, ¶ 15, fn. 2 ("Material incorporated in a complaint may be considered part of the complaint for purposes of determining a Civ.R. 12[B][6] motion to dismiss." [Citation omitted.]). We do the same and apply the narrower Civil Rule 12(B)(6) standard to all the dismissed claims.

{¶ 15} The statute-of-limitations defense presents a particular wrinkle in this dismissal framework. As an affirmative defense, *Bank of New York Mellon Trust Co., N.A. v. Unger*, 2015-Ohio-769, ¶ 9 (8th Dist.), it ordinarily lies beyond the reach of a Civ.R. 12(B)(6) motion because such defenses "generally require[] reference to materials outside the complaint," *Columbus Green Bldg. Forum v. State*, 2012-Ohio-4244, ¶ 24 (10th Dist.). Accordingly, dismissal based on a statute of limitations is proper under Civ.R. 12(B)(6) only where "the complaint conclusively shows that the action is time-barred." *Id.* The Ohio Supreme Court has established a clear boundary: A motion to dismiss a complaint under Civ.R. 12(B) "which is based upon the statute of limitations is erroneously granted where the complaint does not conclusively show on its face the action is barred by the statute of limitations." *Velotta v. Leo Petronzio Landscaping, Inc.*, 69 Ohio St.2d 376, 379 (1982).

{¶ 16} With the framework for our review in place, we turn to the assignments of error.

A. Does 28 U.S.C. 1367(d) permit retroactive tolling?

{¶ 17} The first assignment of error alleges:

> THE TRIAL COURT ERRED BY DISMISSING CLAIMS AND ORDERING JUDGMENT ON THE PLEADINGS BECAUSE FEDERAL LAW TOLLED THE STATUTE OF LIMITATIONS.

{¶ 18} Smith's argument in the first assignment of error presents a question about the interaction between federal and state procedural law: Whether the supplemental-jurisdiction statute, 28 U.S.C. 1367(d), tolls a state statute of limitations from the moment a complaint containing a federal claim is filed in state court, even when that claim is not removed to federal court until after the limitations period expires.

{¶ 19} 28 U.S.C. 1367(d) is designed to protect plaintiffs who pursue state-law claims in federal courts under supplemental jurisdiction. Federal courts may exercise supplemental jurisdiction over state-law claims that form part of the same case or controversy as claims within the court's original jurisdiction. 28 U.S.C. 1367(a). However, when federal courts dismiss the jurisdictional-anchor claims, they may, and frequently do, decline to exercise supplemental jurisdiction over the remaining state claims, dismissing them without prejudice. Section 1367(d) ensures that plaintiffs are not time-barred from refiling these state claims in state courts by tolling the limitations period during federal proceedings and for 30 days post-dismissal:

> (d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

{¶ 20} The Supreme Court in *Artis v. Dist. of Columbia*, 583 U.S. 71, 75 (2018), held that "tolled" under section 1367(d) means the statute of limitations is entirely suspended ("stop-the-clock")—rather than merely extended—while claims are pending in federal court. That is, "[i]t suspends the statute of limitations for two adjacent time periods: while the claim is pending in federal court and for 30 days postdismissal." *Id.* at 83. This approach preserves the plaintiff's remaining time rather than merely providing a grace period after dismissal. So, for example, if a state claim has a three-year limitations period and spends two years in federal court, the plaintiff retains the full three years minus the time already accrued before federal filing, plus 30 days post-dismissal.

{¶ 21} The case before us, though, originated in state court but later traveled to federal court through removal. The question raised here by Smith is whether the "stop-the-clock" mechanism applies retroactively to the period when a case was pending in state court before removal to federal court, particularly when removal occurs after the state limitations period would otherwise expire.

{¶ 22} Removal jurisdiction allows defendants to transfer certain cases from state to federal court when federal jurisdiction exists. *See* 28 U.S.C. 1441. But section 1367(d)'s tolling applies only to claims "pending in federal court." *Artis* at 83. This textual limitation excludes the pre-removal period when claims were pending exclusively in state court. Accordingly, if a plaintiff files mixed federal-state claims in state court and the defendant later removes the case to federal court, but only after the state limitations period has expired, in such circumstances, section 1367(d) does not reach back in time to toll the limitations period for the interval the case was in state court. The tolling begins only upon removal, when the state claims come under the federal court's supplemental jurisdiction. If the state limitations period expired before removal, the plaintiff's state claims are already time-barred, and section 1367(d) offers no relief. Nothing in the removal statute indicates that the case should be treated as if it had been originally filed in federal court for purposes of section 1367(d)'s operation. *See* 28 U.S.C. 1441. Section 1367(d)'s tolling mechanism focuses exclusively on the time claims spend in federal court.

{¶ 23} Reading section 1367(d) to retroactively toll pre-removal periods would disconnect the provision from its statutory context. Division (a) of section 1367 expressly refers to claims over which "district courts have original jurisdiction" and related claims within the same case or controversy. The reference to "district courts" plainly invokes federal courts, not state courts. When section 1367(d) refers to tolling for "any claim asserted under subsection (a)," it necessarily refers to claims properly within federal jurisdiction. The Supreme Court's decision in *Artis* reinforces this understanding. The Court explained that section 1367(d) "suspends the statute of limitations for two adjacent time periods: while the claim is pending in federal court and for 30 days postdismissal.” *Artis* at 83. This language reflects the provision’s careful calibration.

{¶ 24} Smith’s contrary interpretation rests on a novel conception of when federal jurisdiction attaches. While federal courts’ original jurisdiction may exist in the abstract from the moment a claim triggering that jurisdiction is commenced, this principle presupposes that the claim has been properly presented to a federal forum. Certain statutory schemes specifically vest jurisdiction in federal courts, but this jurisdiction does not materialize until the case arrives there. The FTCA, to take a relevant example, vest exclusive jurisdiction in the federal district courts for claims arising from the tortious conduct of government employees acting within the scope of their official duties. *See Bray*, 97 F.4th at 406. “When a Plaintiff files a claim in state court that is later removed to federal court pursuant to FTCA, ‘jurisdiction under section 2675(a) [administrative-exhaustion requirement] does not arise until after removal to the district court, for only there does the action become one against the United States.’” *Whitney v. Percell*, 2012 U.S. Dist. LEXIS 53275, *3 (D. Ariz. Apr. 16, 2012), quoting *Staple v. United States*, 740 F.2d 766, 768 (9th Cir. 1984). Although Smith attempts to distinguish these cases as addressing administrative exhaustion rather than tolling, the principle applies with equal force here: Federal jurisdiction does not attach to a state-court filing simply because it could have been filed in federal court.

{¶ 25} In the present case, federal jurisdiction did not attach until January 26, 2021, when the United States removed Smith’s action to federal court. By that point, the one-year statute of limitations had already expired in November 2020. When federal jurisdiction finally attached, there was, quite simply, no limitations period left to toll under section 1367(d).

{¶ 26} Smith also argues that her action is timely under Ohio's savings statute. The savings statute, R.C. 2305.19(A), pertinently provides:

> In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later. . . .

Ohio law "unequivocally establishes that the savings statute can be used only once to refile a case." *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 1997-Ohio-395.

{¶ 27} The procedural sequence is clear from the complaint in the present case: Smith filed her original complaint in state court on October 23, 2020, which was removed to federal court on January 26, 2021 (Case 1). Before removal, in November 2020, the limitations period for her claims expired. Smith filed a second action in federal court on September 3, 2021 (Case 2). Case 1, the original case, was dismissed on January 3, 2022. Case 2 was dismissed on June 20, 2023, and less than a month later, on July 13, 2023, Smith filed the present third action.

{¶ 28} When Smith filed Case 2, the first case had not yet "fail[ed] otherwise than upon the merits," R.C. 2305.19(A). That did not occur until Case 1 was dismissed four months later. It was when Case 1 was dismissed that the savings statute was actually triggered. So it would seem that Case 2 could not have been filed under the savings statute. We need not resolve this matter, though, because regardless, Smith cannot file the action a third time. Even if Case 2 were not filed under the savings statute, the time for refiling the case under the savings statute expired one year after Case 1 was dismissed, *see id.*, which means that Smith needed to refile the case, at the latest, by January 3, 2023. Because she refiled the present action after that date, this action is plainly untimely.

{¶ 29} The procedural circumstances presented in this case are like those addressed by the Sixth District Court of Appeals in *Rebel Underwood v. Mercy Health Physicians N., LLC*, 2022-Ohio-4313 (6th Dist.). In that case, the court considered whether 28 U.S.C. 1367(d)—the federal supplemental jurisdiction statute's tolling provision—permitted refiling state-law claims in state court after federal dismissal, when the original limitations period had expired before the federal filing and the plaintiff had already used the savings statute. The case arose after David Underwood died allegedly due to negligent care by a doctor and a nurse practitioner. His widow filed her initial state-court complaint within the limitations period but subsequently dismissed it, refiled in federal court using Ohio's saving statute, and then attempted a second refiling in state court after the federal court declined supplemental jurisdiction. The Sixth District analyzed several key issues: the nature of Ohio's saving statute (determining it was neither a limitations period nor a tolling provision); the limited applicability of prior precedent; and the implications of the Supreme Court's "stop-the-clock" interpretation of section 1367(d) in *Artis v. District of Columbia*. Ultimately, the court held that section 1367(d) applied only when the limitations periods expired while the action was pending in federal court—not when a plaintiff had already used a savings statute to file in federal court after the original limitations period expired. "Where a plaintiff has already filed her claims once and utilizes Ohio's saving statute, R.C. 2305.19(A), to refile in federal court after the original statute of limitations has expired," said the court, "there is no 'period of limitations' to 'toll' under 28 U.S.C. 1367(d), and no 30-day grace period for refiling in state court." *Rebel Underwood* at ¶46.

{¶ 30} The Ninth District Court of Appeals addressed a similar question in *Vogel v. Northeast Ohio Media Group LLC*, 2020-Ohio-854 (9th Dist.). In that case, the appellate court affirmed the trial court's grant of summary judgment to the defendants on Steven Vogel's libel, defamation, and false light claims. Vogel, the former chief building official for the City of Medina, was terminated in 2013 for alleged inappropriate behavior. He claimed that the defendants subsequently published stories about his termination containing inaccurate information that damaged his reputation and hindered his employment prospects.

{¶ 31} The case centered on a procedural question regarding statutes of limitations. Vogel initially filed suit in Cuyahoga County Common Pleas Court in 2014, then voluntarily dismissed it in 2016. He subsequently filed in federal court, adding federal claims to his original state claims. After the federal court granted judgment on the pleadings for his federal claims, it declined to exercise supplemental jurisdiction over his state law claims and dismissed them. Thirty days later, Vogel filed in Medina County Common Pleas Court, where the trial court ruled his claims were time-barred.

{¶ 32} The crux of the appeal concerned the interplay between Ohio's savings statute and the supplemental jurisdiction tolling provision, 28 U.S.C. 1367(d). Vogel argued that under the Supreme Court's interpretation in *Artis v. District of Columbia*, section 1367(d) allowed him to refile his state claims within 30 days of the federal court's dismissal. The court rejected this argument, holding that since Vogel's one-year limitations period for his defamation claims had already expired before he filed in federal court, there was no "period of limitations" left for section 1367(d) to toll. Additionally, the court noted that Ohio's savings statute can only be used once, and Vogel had already used it to file in federal court. The court acknowledged the harshness of its ruling on Vogel but maintained that courts cannot modify statutory language to provide relief not contemplated by the legislature or Congress.

{¶ 33} Smith attempts to distinguish *Rebel Underwood* and *Vogel* by arguing that these cases did not consider her novel theory that section 1367(d) applies from the moment a claim is filed in state court. But this distinction is inapposite. Even if we were to credit Smith's theory (which, as explained above, we do not), the operation of Ohio's savings statute remains dispositive.

{¶ 34} Smith contends that her interpretation of section 1367(d) is necessary to prevent the "Kafkaesque" result of plaintiffs losing their claims due to unexpected removals under the FSHCAA. We acknowledge the procedural complexities in this context. *See Bray*, 97 F.4th at 418 (observing that "provisions in the Federally Supported Health Centers Assistance Act (FSHCAA) and Federal Tort Claims Act (FTCA) can trap unwary litigants") (Thapar, J., concurring). But such policy concerns cannot override section 1367(d)'s text or established jurisdictional principles. While legitimate procedural pathways might exist to preserve meritorious claims, they do not include a judicial rewriting of section 1367(d) to expand its scope beyond its intended purpose.

{¶ 35} Section 1367(d)'s tolling mechanism operates only during the pendency of claims in federal court. It does not retroactively suspend state limitations periods for the time claims were pending in state court before removal. Because federal jurisdiction did not attach until after the limitations period expired, and because Smith had lost her opportunity to use Ohio's savings statute, the trial court properly dismissed her claims.

{¶ 36} The first assignment of error is overruled.

B. Does the relation-back doctrine apply?

{¶ 37} The second assignment of error alleges:

> THE TRIAL COURT ERRED BY DISMISSING CLAIMS AND ORDERING JUDGMENT ON THE PLEADINGS BECAUSE OHIO'S SAVINGS STATUTE COULD ONLY HAVE APPLIED FOR THE FIRST TIME IN THIS PROCEEDING AND UNDER THE DOCTRINE OF RELATION BACK.

{¶ 38} Smith's alternative argument, in the second assignment of error, is that her second amended complaint in Case 2—which added back the state defendants—relates back to her original complaint in Case 1 under the relation-back provisions of Civ.R. 15(C) and Fed.R.Civ.P. 15(c). On this theory, the first failure otherwise than on the merits for purposes of the savings statute occurred when the federal court dismissed Case 2. And because she filed the present action within one year from that dismissal, this action would be timely. *See* R.C. 2305.19(A).

{¶ 39} The relation-back doctrine serves a specific and limited procedural purpose. Civ.R. 15(C) provides that an amendment relates back to the original pleading when "the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." When the amendment changes the party against whom a claim is asserted, relation back further requires that the new party received sufficient notice of the action to avoid prejudice in defending on the merits, and knew or should have known that, absent a mistake concerning the proper party's identity, the action would have been brought against them.

{¶ 40} Smith's invocation of the relation-back doctrine misapprehends its scope and purpose. The doctrine permits amendments to an existing complaint; it does not resurrect previously dismissed actions or connect separate lawsuits across different courts and dockets. As the Tenth District has aptly noted, "Civ.R. 15(C) does not apply to relate an amended complaint back to a complaint that was dismissed." (Citation omitted.) *Finley v. Miami Univ.*, 2022-Ohio-3066, ¶ 18 (10th Dist.). This principle flows logically from the text and structure of the rule itself, which contemplates amendments within a single, ongoing action.

{¶ 41} This conclusion follows from the legal effect of a dismissal without prejudice. As the Ohio Supreme Court has emphasized, "[a] dismissal without prejudice leaves the parties as if no action had been brought at all.'" *Wilson v. Durrani*, 2020-Ohio-6827, ¶ 20, quoting *DeVille Photography, Inc. v. Bowers*, 169

Ohio St. 267, 272 (1959). Such an action "'is deemed to never have existed.'" *Id.*, quoting *Antoon v. Cleveland Clinic Found.*, 2016-Ohio-7432, ¶ 24. One cannot relate back to something that, in the eyes of the law, never existed.

{¶ 42} The same is true under Fed.R.Civ.P. 15(c), the federal relation-back provision. Federal courts have said that Fed.R.Civ.P. 15(c) governs amendments to pleadings, not the filing of new complaints. *See Morgan Distrib. Co. v. Unidynamic Corp.*, 868 F.2d 992, 994 (8th Cir. 1989) (rejecting the argument that a subsequent lawsuit related back to an earlier suit). As the Seventh Circuit Court of Appeals has put it, "Rule 15(c), by its terms, only applies to amended pleadings in the same action as the original, timely pleading." *Bailey v. N. Indiana Pub. Serv. Co.*, 910 F.2d 406, 413 (7th Cir. 1990). *See also Schiavone v. Fortune*, 477 U.S. 21, 29 (1986) (stating that the rule's plain language applies only to amendments stating claims that arise "out of the conduct set forth in the original pleading").

{¶ 43} Smith's theory would require us to disregard this well-established precedent by creating a novel procedural mechanism that effectively bridges separate actions across different courts. It would expand the relation-back doctrine from allowing for corrective amendments into a sweeping exception to limitations periods. We see no basis in the text of Civ.R. 15(C) or Fed.R.Civ.P. 15(c) or the case law that would permit such an expansive interpretation. Case 1 had already been dismissed when Smith filed her second amended complaint in Case 2. The only possible relation-back was to Smith's original complaint in Case 2.

{¶ 44} The second assignment of error is overruled.

III. Conclusion

{¶ 45} Having overruled both of the presented assignments of error, we hold that the trial court properly dismissed Smith's claims as time-barred. Therefore the trial court's judgment is affirmed.

M. POWELL AND BYRNE, JJ., concur.

APPENDIX C

Supreme Court of Ohio Clerk of Court – Filed March 03, 2026 – Case No. 2025-1663

THE SUPREME COURT OF OHIO

Stephanie Smith

v.

Mercy Health-Clermont Hospital, LLC, et al.

Case No. 2025-1663

ENTRY

Upon consideration of the motion to dismiss of appellee Laboratory Corporation of America Holdings, it is ordered by the court the motion is denied.

It is further ordered by the court that upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to Rule 7.08(B)(4).

(Clermont County Court of Appeals; No. CA2024-02-010)

s/ Sharon L. Kennedy
Sharon L. Kennedy
Chief Justice

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

APPENDIX D
COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STEPHANIE SMITH,

Plaintiff,

- vs –

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,

Defendants.

FILED 2024 JAN 11
PM 3:27
BARBARA A. WIEDENBEIN CLERK OF COMMON PLEAS CLERMONT COUNTY, OH

CASE NO. 2023 CVA 00692
Judge Anthony W. Brock

DECISION AND ENTRY GRANTING DEFENDANTS YELLEY AND EMP'S CIV.R. 12 (C) MOTION FOR JUDGMENT ON THE PLEADINGS

This matter is before the Court upon the Civ.R. 12(C) motion for judgment on the pleadings filed by Defendant Samantha Yelley, D.O. ("Yelley") and Defendant Emergency Medicine Physicians of Cincinnati, Ltd. ("EMP"). Upon consideration of the pleadings, the documents attached thereto, the parties' arguments and the applicable law, the Court renders the following decision. Construing all the material allegations in the complaint as true, and drawing all reasonable inferences from those facts in favor of Smith, the Court finds that Smith can prove no set of facts that would support a claim for relief, and Yelley and EMP are entitled to judgment as a matter of law. Accordingly, the motion for judgment on the pleadings is hereby granted.

I. Statement of the Facts

On October 26, 2019, Smith went to the emergency department of Defendant Mercy-Health Clermont Hospital, LLC ("Mercy Clermont") for left knee pain. (Complaint ¶ 28.) There, she was put in a knee immobilizer and instructed to follow up with her primary care doctor, Dr. Robert Chang. (*Id.* at ¶ 30.) On October 31, 2019, an employee of Defendant Laboratory Corporation of America Holdings ("Labcorp") attempted to draw blood from Smith's right arm. Despite multiple attempts, the blood draw was unsuccessful and Smith was advised to go home. (*Id.* at ¶¶ 32–34.)

That same day, Smith noticed a hard knot in her arm where the blood draw had been attempted. The knot became increasingly painful, so Smith again went to Mercy Clermont. (*Id.* at ¶¶ 36–38.) There, Smith was evaluated by Defendant Dr. Samantha Yelley for right arm swelling and pain. (*Id.* at ¶ 39.) Yelley was an employee, agent and/or servant of Defendant EMP. (*Id.* at ¶ 88.) After various medical procedures, Yelley diagnosed Smith with an injury to the right brachial artery. (*Id.* at ¶¶ 40–49.) On November 1, 2019, Smith was transferred to Mercy Health-Anderson Hospital, where she underwent right brachial artery exploration and repair. (*Id.* at ¶¶ 58, 62.) After various additional procedures, Smith was finally discharged from Mercy Health-Anderson Hospital on November 9, 2019. (*Id.* at ¶ 74.) As a result of her injuries, Smith has suffered total loss of use of her right arm and hand. (*Id.* at ¶ 76.)

Smith filed her original complaint in this matter with the Clermont County Court of Common Pleas on October 23, 2020. (*Id.* at ¶ 2.) The complaint named Mercy Clermont, Labcorp, US Acute Care Solutions, Healthsource of Ohio Family Practice, Dr. Yelley, and Dr. Roger Chang as Defendants. The U.S. Department of Health and Human Services deemed Healthsource of Ohio to be a public health service employer and Dr. Chang to be a public health service employee. (*Id.* at ¶ 6.) As such, on January 26, 2021, the United States of America removed the case to the United States District Court of Southern Ohio. (*Id.* at ¶ 13, Ex. A.)[1] The United States of America then substituted itself as a party defendant in place of Healthsource of Ohio and Dr. Chang. (*Id.* at ¶ 13, Ex. B.)

Smith subsequently filed a second case in the District Court involving the same cause of action.[2] "Smith then filed a second lawsuit in federal court – the instant case – based on the same facts, which also named the United States of America on behalf of both Roger Chang and HealthSource of Ohio Family Practice." (Complaint, Ex. C, p. 1.) Smith eventually moved to dismiss all claims against the United States of America in that second case. (*Id.* at p. 2.) On May 1, 2023, the District Court granted Smith's motion to dismiss the United States of America on behalf of Dr. Chang and HealthSource of Ohio Family practice. (*Id.* at p. 3.) The District Court went on to state, "That dismissal, however, creates a new wrinkle. The Court

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[1]The removed case was numbered Case No. 1:21-cv-00057 by the District Court.

[2]This second case was numbered Case No. 1:21-cv-573 by the District Court.

has now dismissed all claims that gave rise to the Court's original subject-matter jurisdiction. At bottom, this is a state-law tort case." (*Id.*) The District Court declined to exercise supplemental jurisdiction over the remaining state law claims. (Complaint, Ex. D, p. 4.)

Smith asked the District Court to remand that second case to this Court. (*Id.* at p. 1.) The District Court denied Smith's motion on June 20, 2023. In denying Smith's motion to remand, the District Court stated the following: "Although Defendants removed a companion case, Case Number 1:21-cv-57, from state court, Smith filed *this* case directly in federal court. (Compl., Doc. 1). The Court cannot remand a case never removed from state court in the first instance." (*Id.* at p. 4.) Accordingly, the District Court dismissed, without prejudice, Case Number 1:21-cv-573 in its entirety.

On July 13, 2023, Smith filed her complaint in the current case. The complaint names Mercy Clermont, Labcorp, Yelley, and EMP as Defendants. Smith asserts causes of action for negligence, lack of informed consent, negligent infliction of emotional distress, and punitive damages. Defendant Labcorp filed a Civ.R. 12(B)(6) motion to dismiss Smith's claims and Defendant Mercy Clermont filed a related Civ.R. 12(C) motion for judgment on the pleadings. On December 1, 2023, the Court granted both motions. On December 8, 2023, Yelley and EMP filed their own motion for judgment on the pleadings. That motion is the matter under consideration.

II. <u>Standard of Review</u>

Civ.R. 12(C) authorizes the Court to grant judgment on the pleadings only when "no material factual issues exist and the movant is entitled to judgment as a matter of law." *McGlothin v. Schad*, 194 Ohio App.3d 669, 2011-Ohio-3011, ¶ 10, quoting *State ex rel. Midwest Pride IV, Inc. v. Pontious*, 75 Ohio St.3d 565, 570, 1996-Ohio-459, 664 N.E.2d 931 (1996). In ruling on such a motion, "the court construes as true all the material allegations in the complaint, with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party." *Shaw v Aberdeen*, 12th Dist. Brown No. CA2016–06–012, 2016-Ohio-8229, ¶ 11, citing *Corporex Dev. & Constr. Mgt., Inc. v. Shook*, 106 Ohio St.3d 412, 2005-Ohio-5409, ¶ 2. "The determination of a motion for judgment on the pleadings is limited solely to the allegations in the pleadings and any writings attached to the pleadings." *Golden v. Milford Exempted Village School Bd. of Edn.*, 12th Dist. Clermont No. CA2008–10–097, 2009-Ohio-3418, ¶ 6. Judgment should be granted to the defendant only if the plaintiff can prove no set of facts which would support a claim for relief. Any dispute of material fact precludes judgment on the pleadings. *State ex rel. Madison Cty. Engineer v. Madison Cty. Commrs.*, 12th Dist. Butler No. CA2016–01–003, 2016-Ohio-7191, ¶ 28.

III. Legal Analysis

Having considered Yelley and EMP's motion, Smith's memorandum in opposition, and Yelley and EMP's reply, the Court finds no reason to revise its analysis as set forth in its December 1, 2023 Decision and Entry granting judgment on the pleadings to Defendant Mercy Clermont. Accordingly, the Court applies the exact same rationale, as expressed below, to Yelley and EMP's motion for judgment on the pleadings:

> Construing all the material allegations in the complaint as true, and drawing all reasonable inferences in favor of Smith, the Court finds that no material factual issues exist and that Mercy Clermont is entitled to judgment as a matter of law. It is clear from the complaint and the attached documents thereto that the current lawsuit was not filed within Ohio's applicable one-year statute of limitations. Further, Smith utilized Ohio's saving statute in filing Case No. 1:21-cv-573 after the statute of limitations had expired. As such, 28 U.S.C. sec 1367(d) has no applicability in the current action and Smith is unable to prevail on her complaint in this, her third legal action involving the same medical claim.

(Dec. 1. 2023, Decision and Entry, p. 9.)

As such, the Court hereby grants Defendant Susan Yelley and Defendant Emergency Medicine Physicians of Cincinnati, Ltd.'s Civ.R. 12(C) motion for judgment on the pleadings. This is a final, appealable order and there is no just reason for delay.

IT IS SO ORDERED.
s/ Anthony W. Brock
Judge Anthony W. Brock

[Certificate of Service Omitted]

APPENDIX E
COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

STEPHANIE SMITH,

Plaintiff,

- vs –

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,

Defendants.

FILED 2023 DEC 1
PM 1:45
BARBARA A. WIEDENBEIN CLERK OF COMMON PLEAS CLERMONT COUNTY, OH

CASE NO. 2023 CVA 00692
Judge Anthony W. Brock

DECISION AND ENTRY GRANTING DEFENDANT LABCORP'S CIV.R. 12(B)(6) MOTION TO DISMISS

This matter is before the Court upon Defendant Laboratory Corporation of America Holdings' ("Labcorp") Civ.R. 12(B)(6) motion to dismiss the complaint of Plaintiff Stephanie Smith ("Smith"). Labcorp argues Smith's complaint fails to state a claim upon which relief can be granted because the relevant statute of limitations has elapsed. Upon consideration of the complaint, the documents attached thereto, the parties' arguments and the applicable law, the Court renders the following decision. Assuming all the factual allegations of the complaint as true and drawing all reasonable inferences in favor of Smith, the Court finds that Smith has already utilized Ohio's savings statute, that 28 U.S.C. sec 1367(d) has no applicability in the current action, and that the current action was not filed within Ohio's applicable one-year statute of limitations. As such, Smith can prove no set of facts entitling her to relief and Labcorp's Civ.R. 12(B)(6) motion to dismiss is hereby granted.

* * *

Smith argues that she is able to refile the present case because, due to the application of 28 U.S.C. sec 1367(d), her claims are not subject to the one-year statute of limitations of R.C. 2305.113(A). 28 U.S.C. sec 1367(d) states as follows:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

Smith correctly notes that she complied with the original statute of limitations by filing her initial complaint on October 23, 2020. She argues that the statute of limitations was tolled during the 11 days between the voluntary dismissal of that original case, Case No. 1:21-cv-00057, and the filing of the amended complaint of the second case she initiated in federal court on January 14, 2022, in Case No. 1:21-cv-573. Further, Smith asserts that, under 28 U.S.C. sec

1367(d), the statute of limitations remained tolled for 30 days following the District Court's dismissal of Case No. 1:21-cv-573 on June 20, 2023. According to Smith, because she filed the current case within 30 days of that June 20, 2023 dismissal date, she satisfied the limitations period. This Court disagrees with Smith's interpretation of how the federal statute applies to the circumstances of the case at hand.

It is undisputed that Smith's cause of action accrued in November of 2019. Thus, by the time the original action was removed to federal court on January 26, 2021, the one-year statute of limitations had already expired. Smith utilized her one and only opportunity under Ohio savings statute to file her second case regarding the same claims in District Court Case No. 1:21-cv-573. Accordingly, there is no cause of action left to toll under 28 U.S.C. sec 1367(d). In such circumstances, Ohio courts have found that 28 U.S.C. sec 1367(d) does not provide a means for plaintiffs to refile their claims in state court:

> When a federal court dismisses state claims after declining to exercise supplemental jurisdiction, 28 U.S.C. 1367(d) applies only when the statute of limitations expires while the action is pending in federal court. Where a plaintiff has already filed her claims once and utilizes Ohio's saving statute, R.C. 2305.19(A), to refile in federal court after the original statute of limitations has expired, there is no period of limitations to toll and no 30-day grace period for refiling in state court, therefore, 28 U.S.C. 1367(d) is inapplicable.

Underwood v. Mercy Health Physicians N., LLC, 6th Dist. No. L-22-1063, 2022-Ohio-4313, 203 N.E.3d 36, ¶ 55. Here, Smith filed her original claim in state court then utilized Ohio's saving statute by refiling in

Case No. 1:21-cv-573 in federal court after the statute of limitations had expired. Accordingly, after the dismissal of Case No. 1:21-cv-573, Smith had no 30-day grace period to, once again, refile her case in this Court.

* * *

IV. Conclusion

Presuming all the factual allegations of the complaint as true, and making all reasonable inferences from those facts in favor of Smith, the Court finds that there are no set of facts which would entitle Smith to relief on her claims against Labcorp. Is clear from the face of the complaint and the attached documents that the current lawsuit was not filed within Ohio's applicable one-year statute of limitations. Smith utilized Ohio's saving statute in filing Case No. 1:21-cv-573 after the statute of limitations had expired. As such, 28 U.S.C. sec 1367(d) has no applicability in the current action and Smith is unable to prevail on her complaint in this, her third legal action involving the same medical claim. Accordingly, Labcorp's Civ.R. 12(B)(6) motion to dismiss is hereby granted.

IT IS SO ORDERED.

s/ Anthony W. Brock
Judge Anthony W. Brock

[Certificate of Service Omitted]

APPENDIX F
IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STEPHANIE SMITH,
Appellant,

- vs –

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,
Appellees.

COURT OF APPEALS FILED NOV – 3 2025 ALLEN M. FREEMAN CLERK CLERMONT COUNTY, OH

CASE NO. CA2024-02-010

OPINION AND JUDGMENT ENTRY ON RECONSIDERATION

11/3/2025

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS Case No. 2023 CVA 00692

Rittgers, Rittgers & Nakajima, and Lindsay A. Lawrence and Joseph W. Shea III, and Flowers & Grube, and Louis E. Grube and Kendra Davitt, *for appellant*.

Rendigs, Fry, Kiely & Dennis, L.L.P., and Michael P. Foley, *for appellee, Mercy Health-Clermont Hospital, LLC*.

Calderhead, Lockemeyer & Paschke, and Joshua F. DeBra, *for appellees, EMG of Cincinnati, LTD and Samantha Yelley, D.O*.

Frost Brown Todd, LLC, and Maureen A. Bickley and Kaitlyn Hawkins-Yokley, *for appellee, Laboratory Corporation of America Holdings*.

OPINION

HENDRICKSON, P.J.

{¶ 1} Appellant, Stephanie Smith, timely asked this court under App.R. 26(A) to reconsider an aspect of our May 5, 2025 decision issued in *Smith v. Mercy Health-Clermont Hosp., LLC*, 2025-Ohio-1590 (12th Dist.) ("Smith I"). Appellee, Mercy Health-Clermont Hospital, LLC ("Mercy Clermont"), filed a memorandum in opposition to Smith's application for reconsideration.

{¶ 2} Upon review of Smith's application for reconsideration, and Mercy Clermont's memorandum in opposition, this court grants Smith's application. The issue raised is whether the Ohio Supreme Court's decision in *McCullough v. Bennett*, 2024-Ohio-2783, issued while Smith's appeal was pending, which rejected the "one-use" limitation on Ohio's saving statute, undermines this court's holding that her medical-malpractice claims should be dismissed as time-barred.

Facts and Procedural History

{¶ 3} On October 26, 2019, Smith sought treatment at Mercy Health-Clermont Hospital for left knee pain. Five days later, during a follow-up visit with Dr. Roger Chang at HealthSource of Ohio, a LabCorp employee's unsuccessful blood draw attempt resulted in a hardened knot on Smith's arm that progressively worsened. Smith returned to Mercy Clermont's emergency department that same day, where Dr. Samantha Yelley diagnosed "an injury of the right brachial artery at high risk for compartment syndrome and intramuscular hematoma." Smith underwent surgical repair the following day and remained hospitalized for eight days. She alleges that negligent treatment by multiple defendants resulted in compartment syndrome and permanent functional impairment of her right arm.

{¶ 4} A procedural journey followed. On October 23, 2020, mere days before the one-year medical malpractice statute of limitations would expire under R.C. 2305.113(A), Smith filed her initial complaint in the Clermont County Court of Common Pleas ("Case 1"), naming Mercy Clermont, LabCorp, Dr. Yelley, Emergency Medicine Physicians of Cincinnati, Ltd., HealthSource, and Dr. Chang as defendants.

{¶ 5} The jurisdictional landscape shifted when it emerged that HealthSource qualified as a federally supported health center under the Federally Supported Health Centers Assistance Act. This designation rendered the Federal Tort Claims Act ("FTCA") Smith's exclusive remedy against HealthSource and Dr. Chang, requiring administrative exhaustion before litigation. Smith submitted the required administrative claim to the Department of Health and Human Services on October 21, 2020.

{¶ 6} On January 26, 2021, the United States removed Case 1 to federal court and substituted itself as defendant for the HealthSource and Dr. Chang claims. By this point, the one-year statute of limitations had expired in November 2020. The United States moved to dismiss for failure to satisfy the FTCA's administrative exhaustion requirement, which had been constructively denied by April 15, 2021.

{¶ 7} Seeking to comply with federal exhaustion requirements, Smith filed a second action in federal court on September 3, 2021 ("Case 2"), asserting identical claims against the same defendants. She contemporaneously moved to consolidate Cases 1 and 2. On September 7, 2021, Smith filed her first amended complaint in Case 2, initially limiting it to claims against only the United States.

{¶ 8} The federal proceedings complicated matters further. At a November 17, 2021 status conference, the parties reached an agreement whereby Case 1 would be dismissed and Smith would file an amended complaint in Case 2 to reintroduce the state-court defendants. Under this agreement, Case 1 was dismissed by stipulated order on January 3, 2022. Smith then filed her second amended complaint in Case 2 on January 14, 2022, reinstating claims against all original defendants.

{¶ 9} Following additional litigation, Smith moved to dismiss the United States from Case 2, which the district court granted on May 1, 2023. With the federal defendant no longer a party, the court declined to exercise supplemental jurisdiction over the remaining state-law claims. On June 20, 2023, the court dismissed Case 2 "without prejudice for refiling in the state court," explaining that remand was procedurally impossible since Case 2 had originated in federal court rather than being removed from state court.

{¶ 10} On July 13, 2023, Smith filed the present action in state court, reasserting her medical-negligence claims against the state defendants. The defendants moved for dismissal, arguing that the statute of limitations had expired and that Smith had already exhausted Ohio's saving statute. Smith responded that the federal supplemental-jurisdiction statute, 28

U.S.C. 1367(d), had tolled the limitations period during the federal proceedings.

{¶ 11} The trial court granted the defendants' motions, concluding that the one-year statute of limitations had expired in November 2020, that Smith had already invoked Ohio's saving statute when filing Case 2, and that the federal tolling provision was inapplicable because the original limitations period had already lapsed before Case 1's removal to federal court.

{¶ 12} Smith appealed, and we affirmed on May 5, 2025. Her first assignment of error on appeal contended that the trial court had erred by dismissing her claims. We rejected Smith's primary supporting argument that the federal supplemental-jurisdiction statute, 28 U.S.C. 1367(d), tolled the statute of limitations from the moment her complaint containing a federal claim was filed in state court, even though that claim was not removed to federal court until after the limitations period expired. *Smith I*, 2025-Ohio-1590, at ¶ 18.

{¶ 13} Smith's secondary argument sought the protection of Ohio's saving statute. We rejected this argument too:

> Smith also argues that her action is timely under Ohio's savings statute. The savings statute, R.C. 2305.19(A), pertinently provides:
>
> In any action that is commenced or attempted to be commenced, if in due time a judgment for the plaintiff is reversed or if the plaintiff fails otherwise than upon the merits, the plaintiff or, if the plaintiff dies and the cause of action survives, the plaintiff's representative may commence a new action within one year after the date of the reversal of the judgment or the

plaintiff's failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later . . .

Ohio law "unequivocally establishes that the savings statute can be used only once to refile a case." *Thomas v. Freeman*, 79 Ohio St.3d 221, 227, 1997-Ohio-395, 680 N.E.2d 997.

The procedural sequence is clear from the complaint in the present case: Smith filed her original complaint in state court on October 23, 2020, which was removed to federal court on January 26, 2021 (Case 1). Before removal, in November 2020, the limitations period for her claims expired. Smith filed a second action in federal court on September 3, 2021 (Case 2). Case 1, the original case, was dismissed on January 3, 2022. Case 2 was dismissed on June 20, 2023, and less than a month later, on July 13, 2023, Smith filed the present third action.

When Smith filed Case 2, the first case had not yet "fail[ed] otherwise than upon the merits," R.C. 2305.19(A). That did not occur until Case 1 was dismissed four months later. It was when Case 1 was dismissed that the savings statute was actually triggered. So it would seem that Case 2 could not have been filed under the savings statute. We need not resolve this matter, though, because regardless, Smith cannot file the action a third time. Even if Case 2 were not filed under the savings statute, the time for refiling the case under the savings statute expired one year after Case 1 was dismissed, see id., which means that Smith needed to refile the case, at

> the latest, by January 3, 2023. Because she refiled the present action after that date, this action is plainly untimely.

Id. at ¶¶ 26–28.

{¶ 14} Smith's application for reconsideration followed, citing the intervening authority of *McCullough v. Bennett*, 2024-Ohio-2783. The Ohio Supreme Court in *McCullough* definitively rejected the one-use limitation that had emerged from dicta in *Thomas v. Freeman*. The Court held that "the plain terms of the saving statute" control, permitting refiling when a plaintiff "commence[s] a new action within one year after the date of . . . the plaintiff's failure otherwise than upon the merits." *McCullough* at ¶ 14. Our *Smith I* decision cited the discredited *Thomas* dicta and Smith's application for reconsideration properly brings this error to our attention.

The McCullough Decision

{¶ 15} *McCullough* involved a personal injury plaintiff who filed three complaints: the first two within the statute of limitations (both dismissed without prejudice) and a third after the limitations period expired but within one year of the second dismissal. The defendant argued that *Thomas* established a one-use restriction preventing multiple invocations of the saving statute.

{¶ 16} The Ohio Supreme Court firmly rejected this argument. The Court noted that the *Thomas* dicta was unreasoned, never formally adopted, and dealt with a different version of the saving statute, which had been amended in 2004. Most significantly, the Court declared it would not "go beyond the language of the saving statute and impose a 'one-use' limitation." *McCullough*, 2024-Ohio-2783, at ¶ 2. The Court emphasized strict adherence to statutory text rather than judicially created restrictions. The Court distinguished concerns about indefinite extensions, noting this case involved only "a single refiling after the expiration of the limitations period" and that existing Civil Rules already protect against abusive conduct through the double-dismissal rule and courts' authority to specify dismissals with prejudice. *Id.* at ¶ 20-22.

{¶ 17} *McCullough* established that the saving statute's protections are available whenever its plain language requirements are met, regardless of previous filings or dismissals, effectively overruling lower court decisions imposing the "one-use" restriction and mandating adherence to the statute's remedial purpose of providing "an adjudication on the merits." *Id.* at ¶ 11.

The Narrow Reading Of McCullough

{¶ 18} The Eighth District Court of Appeals has adopted a narrow reading of *McCullough*. The appellate court treats *McCullough* as limited to its specific factual circumstances and concludes that the decision's rejection of the *Thomas* dicta does not necessarily eliminate all principled limitations on saving-statute applications.

{¶ 19} While *McCullough* definitively rejected judicial restrictions on Ohio's saving statute, the Supreme Court emphasized that it confronted only "a single refiling after the expiration of the limitations period" and explicitly distinguished cases involving attempts to "indefinitely extend the statute of limitations." *McCullough*, 2024-Ohio-2783, at ¶ 20. The Court underscored that McCullough had filed his second complaint before the limitations period expired and his third complaint within a year of the second complaint's dismissal, suggesting these temporal facts were central to its analysis.

{¶ 20} Building on this foundation, the Eighth District has established a distinction between single and multiple post-expiration refilings. In *Battaglia v. Donegan*, 2024-Ohio-6022 (8th Dist.), and *Gilles v. Donegan*, 2024-Ohio-6023 (8th Dist.), the appellate court held that multiple refilings after the statute of limitations has expired constitute "an attempt to evade or extend the statute of limitations." *Battaglia* at ¶ 36. The court emphasized that *McCullough* "appears to be limited to a single refiling of a complaint after the expiration of the statute of limitations and does not encompass situations where the statute of limitations could be indefinitely extended." *Gilles* at ¶ 34.

{¶ 21} Most recently, in *Pincus v. Pincus*, 2025-Ohio-1826, ¶ 21-22 (8th Dist.), the Eighth District refined this framework further. The court held that for first refilings after limitations-period expiration, the saving statute protects all claims from the original timely complaint. But for second post-expiration refilings, the saving statute protects only those claims that were themselves timely when the second complaint was filed, not claims already time-barred at that point. This approach allows multiple uses of the saving statute consistent with *McCullough's* rejection of a "one-use restriction," while preventing plaintiffs from resurrecting claims that had already expired. The Eighth District's interpretation thus limits *McCullough* within certain temporal boundaries tied to the Supreme Court's own limiting language and policy concerns about indefinite extensions of statutory deadlines.

A Broader Reading Of McCullough

{¶ 22} We think that *McCullough* should be read more broadly than the Eighth District has read it. We do not think that the Ohio Supreme Court's decision should be artificially constrained by its specific factual pattern. The Court's emphasis on the "plain terms" of the saving statute and its categorical rejection of judicial restrictions supports a broader application.

{¶ 23} *McCullough's* central holding rests on statutory-interpretation principles that transcend the specific facts before the Court. The Supreme Court declared that courts should not "go beyond the language of the saving statute and impose a 'one-use' limitation," emphasizing adherence to the statute's plain text. *McCullough*, 2024-Ohio-2783, at ¶ 2. This textual-supremacy principle could apply equally to any judicial restriction or any other court-created limitation not found in the statutory language.

{¶ 24} The Court's criticism of the *Thomas* dicta was not limited to its numerical restriction but extended to the fact that it created judicial limitations without textual support. The Court noted that *Thomas* "did not include any analysis—textual or otherwise—to explain this one-line remark." *Id.* at ¶ 17. This criticism could apply with equal force to any subsequent attempt to impose factual limitations not grounded in the statute's text.

{¶ 25} *McCullough* specifically noted that "the Civil Rules already provide protections against abusive conduct by plaintiffs to indefinitely extend a statute-of-limitations period." *Id.* at ¶ 21. The Court identified the double-dismissal rule under Civ.R. 41(A)(1) and trial courts' authority to specify dismissals with prejudice under Civ.R. 41(A)(2) as sufficient safeguards against abuse. This analysis suggests that courts need not create additional temporal restrictions because adequate protections already exist within the procedural framework. The Court's reliance on existing Civil Rules protections implies that case-by-case analysis, rather than categorical rules based on refiling frequency, provides the appropriate mechanism for preventing abuse. If the Civil Rules adequately address concerns about indefinite extension, then judicial creation of factual limitations becomes unnecessary.

{¶ 26} Arguably, the Supreme Court's observation that *McCullough* involved "a single refiling after the expiration of the limitations period," *McCullough*, 2024-Ohio-2783, at ¶ 21, appears to be descriptive rather than prescriptive. The Court made this factual observation in the context of distinguishing legitimate concerns about indefinite extension from the case before it, not in establishing a new legal rule limiting the saving statute's application.

{¶ 27} *McCullough's* approach, examining the plain statutory language rather than creating factual tests, suggests that the number of post-expiration refilings should not determine the saving statute's availability. The Court did not establish a numerical threshold or suggest that multiple refilings inherently constitute abuse. Instead, it emphasized that each application should be evaluated based on whether the statutory requirements are met and whether existing procedural protections adequately address any concerns about abuse. While policy concerns about indefinite extension remain valid, we think that *McCullough* should be understood to establish that such concerns cannot justify judicial restrictions not found in the statutory text. The Court acknowledged these policy considerations but resolved them through reference to existing procedural protections rather than creating new limitations on the saving statute's application. The Court's approach suggests that policy concerns should be addressed through the legislative process or application of existing procedural rules, not through judicial creation of factual restrictions. Courts must apply the statute as written, with policy considerations addressed through the mechanisms the legislature and rules drafters have already provided.

Case 2's Independent Untimeliness

{¶ 28} Nevertheless, even under our broader reading of *McCullough*, Smith's claims fail because Case 2 was independently untimely when it was filed.

{¶ 29} The relevant timeline establishes the foundation for our analysis: Smith filed her original complaint in state court on October 23, 2020, within the one-year limitations period. The limitations period expired in November 2020. Case 1 was removed to federal court on January 26, 2021, after the limitations period had expired. Smith filed a second action in federal court, Case 2, on September 3, 2021, well outside the original limitations period. Case 1 was dismissed by stipulated order on January 3, 2022, constituting a failure otherwise than upon the merits. Case 2 was dismissed without prejudice on June 20, 2023, and Smith filed the present action, Case 3, on July 13, 2023.

{¶ 30} The saving statute pertinently provides that a plaintiff may "commence a new action within one year after the date of . . . the plaintiff's failure otherwise than upon the merits." R.C. 2305.19(A). When Smith filed Case 2 on September 3, 2021, Case 1 had not yet been dismissed and therefore had not yet "failed otherwise than upon the merits." The statutory language contemplates that the failure must precede or coincide with the refiling, not occur months later. The statute's plain language requires a completed "failure otherwise than upon the merits" before the one-year refiling period begins. Smith cannot invoke the saving statute's protection for a dismissal that had not yet occurred.

{¶ 31} Smith argues that Case 2 should be deemed timely because it was filed within what would eventually become the one-year saving statute period. But this interpretation would require courts to engage in retrospective validation of complaints based on events that had not yet occurred when the complaints were filed. Such an approach lacks support in the statute's plain language and would create uncertainty about the validity of complaints pending future dismissals.

{¶ 32} Because Case 2 was untimely when filed, it cannot serve as a proper predicate for invoking the saving statute to protect Case 3. Smith's argument that Case 2's June 2023 dismissal triggered a fresh one-year period fails based on this fundamental flaw. An untimely complaint cannot be transformed into a timely one through the subsequent dismissal of a separate case. *McCullough's* emphasis on "plain terms" reinforces this conclusion. The Ohio Supreme Court rejected judicial interpretations that departed from the statutory text, observing that courts should not "go beyond the language of the saving statute." *McCullough*, 2024-Ohio-2783, at ¶ 2. The statute's temporal requirements are unambiguous: the failure must precede the refiling. The saving statute simply does not allow for a prematurely commenced new action. (Unlike, for example, App.R. 4[C]'s allowance for a prematurely filed notice of appeal.).

{¶ 33} Because Case 2 was not filed under the protection of the saving statute, it was untimely when filed. The limitations period had expired in November 2020, more than ten months before Case 2's September 2021 filing. Case 2 asserted "identical claims against the same defendants" as Case 1, and it could not relate back to Case 1's filing date. *See Wilson v. Durrani*, 2020-Ohio-6827, ¶ 28 ("there is no need for the refiled complaint to relate back" because the saving statute itself permits refiling beyond the limitations period).

{¶ 34} Smith's present action fails because it was not filed within one year of any proper predicate dismissal. Case 1's dismissal on January 3, 2022, provided a valid basis for invoking the saving statute, but Smith's July 13, 2023 Case 3 filing occurred well after the January 3, 2023 one-year deadline.

{¶ 35} In sum, Smith argues that Case 2's June 2023 dismissal triggered a new one-year period, but this reasoning fails because Case 2 was itself untimely. An untimely case cannot serve as the foundation for a subsequent saving-statute application.

Federal Tolling Provisions Do Not Apply

{¶ 36} Our original analysis of 28 U.S.C. 1367(d) in *Smith I* remains sound and is unaffected by *McCullough*. The federal supplemental jurisdiction statute cannot toll a limitations period that had already expired before the case was filed in federal court. As we explained in our initial decision, "when federal jurisdiction finally attached, there was, quite simply, no limitations period left to toll." *Smith I*, 2025-Ohio-1590, ¶ 25. This principle applies regardless of *McCullough's* saving-statute analysis.

Conclusion

{¶ 37} *McCullough* rejected the *Thomas* dicta cited in this court's initial decision in the present case. Accordingly, the citation to *Thomas* in our original decision, *see id.* at ¶ 26, should not be relied on as authoritative.

{¶ 38} *McCullough's* holding, though, does not compel a different result here. The independent untimeliness of Case 2 provides a ground for affirmance that is unaffected by the Ohio Supreme Court's decision. The analysis under the correct legal framework yields the same result: Smith's claims are time-barred. Therefore, because we still find no reversible error in the trial court's decision, Smith's first assignment of error is again overruled, and our May 5, 2025 judgment is confirmed.

{¶ 39} The trial court's judgment is affirmed.

M. POWELL AND BYRNE, JJ., concur.

JUDGMENT ENTRY

The above cause is before the court pursuant to an application for reconsideration filed by appellant, Stephanie Smith.

For the reasons stated in the above opinion on reconsideration, the application for reconsideration is GRANTED. Upon reconsideration, the court's May 5, 2025 judgment is CONFIRMED.

Costs to be taxed to appellant.

s/ Robert A. Hendrickson
Robert A. Hendrickson, Presiding Judge

s/ Mike Powell
Mike Powell, Judge

s/ Matthew R. Byrne
Matthew R. Byrne, Judge

APPENDIX G
IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

STEPHANIE SMITH,
Appellant,

vs.

MERCY HEALTH-CLERMONT HOSPITAL, LLC, et al.,
Appellees.

COURT OF APPEALS FILED MAR 3 2026 ALLEN M. FREEMAN CLERK CLERMONT COUNTY, OH

CASE NO. CA2024-02-010
REGULAR CALENDAR

ENTRY DENYING SECOND APPLICATION FOR RECONSIDERATION

The above cause is before the court pursuant to a Second Application for Reconsideration filed by counsel for appellant, Stephanie Smith, on November 13, 2025; a memorandum in opposition to the second application filed by counsel for appellees, Emergency Medicine Physicians of Cincinnati, Ltd. and Samantha Yelley, D.O., on December 8, 2025; and a reply memorandum in support of the second application filed by counsel for appellant on December 15, 2025. The second application raises a narrow question: Did this court err in applying Ohio's saving statute, R.C. 2305.19(A), by focusing on the wrong date when determining when appellant's second case was "filed" against state-court defendants?

Procedurally, Smith's medical-malpractice claim accrued on or about October 31, 2019. Under R.C. 2305.113(A), the one-year statute of limitations expired in early November 2020. On October 23, 2020, just before the limitations period expired, Smith filed her initial complaint in the Clermont County Court of Common Pleas (Case 1) against the United States and the state-court defendants. This filing was timely. On January 26, 2021, the United States removed Case 1 to federal court. On September 3, 2021, Smith filed Case 2 in federal court, asserting identical claims against the same defendants. Four days later, on September 7, 2021, Smith filed a First Amended Complaint in Case 2, removing the state-court defendants and narrowing the case to claims against the United States only.

On January 3, 2022, Case 1 was dismissed by stipulated order. This dismissal, which was without prejudice, constituted a "failure otherwise than upon the merits" for purposes of R.C. 2305.19(A). Eleven days later, on January 14, 2022, Smith filed her Second Amended Complaint in Case 2, reinstating claims against all the original defendants. Case 2 was eventually dismissed without prejudice on June 20, 2023. Smith then filed the present action (Case 3) in state court on July 13, 2023, more than eighteen months after Case 1 was dismissed.

In the present appeal, this court rejected Smith's argument that sought the protection of Ohio's saving statute and concluded that Case 3 was not timely filed.

Smith's argument in support of her second application for reconsideration proceeds in three steps: First, she observes that when she filed a First

Amended Complaint in Case 2 on September 7, 2021, the state-court defendants were dismissed from the case. Second, she contends that when she filed a Second Amended Complaint in Case 2 on January 14, 2022 adding the state-court defendants back, this constituted "refiling" her claims against them for purposes of the saving statute, R.C. 2305.19(A). Third, because January 14, 2022, fell within one year of Case 1's dismissal on January 3, 2022, Case 2 was timely under the saving statute, meaning Case 3 was timely filed.

Smith relies on two Ohio appellate-court cases holding that an amended complaint entirely supplants the prior complaint. She also invokes Appellees' "prior concessions" that Smith used the saving statute to file her second case in federal court.

When reviewing an application for reconsideration, an appellate court must determine whether the application calls to the attention of the court an obvious error in its decision, or raises an issue for consideration that was either not considered at all or was not fully considered by this court when it should have been. *Grabill v. Worthington Industries, Inc.*, 91 Ohio App.3d 469. The question here is whether this court committed factual or legal error by concluding that Case 2 was "independently untimely when it was filed."

Smith contends that the "effective filing date" for Case 2, as against the state-court defendants, should be January 14, 2022, when she filed her second amended complaint reinstating claims against all the original defendants, not September 3, 2021, when she filed Case 2 in federal court asserting claims against United States and the state-court defendants. This argument fails under the plain language of the savings statute because R.C. 2305.19(A) provides that when a plaintiff fails otherwise than upon the merits, the plaintiff may *commence a new action* within one year after the failure otherwise than upon the merits.

Civ.R. 3(A) defines when an action is commenced, and states that an action is commenced by filing a complaint with the court, if service is obtained within one year from such filing upon a named defendant. The rule speaks to filing a complaint, not an amended complaint. An action is therefore commenced at its inception when the initial complaint is filed. An amended complaint, by contrast, does not commence an action; it modifies an action that has already been commenced.

Ohio appellate courts have consistently held that an amended complaint filed under an existing case number does not constitute commencement of a new action under the saving statute. *Williams v. Assocs. in Female Health, Inc.*, 2002-Ohio-4954 (11th Dist.); *Haynes v. Ohio Dept. of Rehab. & Corr.*, 2005-Ohio-5099 (10th Dist.). The authorities cited by Smith are distinguishable because they do not address when an action is "commenced." An amended complaint may "supplant" the original complaint for purposes of stating what claims are pending, but the action was still commenced on the date the original complaint was filed.

With respect to Smith's argument that appellees have previously acknowledged that she used the saving statute to refile Case 2, these statements by appellees in their briefs, read in context, merely describe Smith's position or her apparent intent; they did not concede that Case 2 was actually timely filed within the saving statute. In any event, legal arguments in briefs are not binding judicial admissions, and they cannot override the requirements of the saving statute.

Based upon the foregoing, the second application for reconsideration is DENIED. Case 2 was filed on September 3, 2021 before the dismissal of Case 1 on January 3, 2022. Therefore, Case 2 could not have been filed under the protection of the saving statute. The subsequent amendments to Case 2 did not change its filing date or transform it into a new action. Case 3, filed on July 13, 2023, was filed more than 18 months after the dismissal of Case 1, well beyond the one-year statute of limitations set forth in R.C. 2305.19(A).

IT IS SO ORDERED.

s/ Robert A. Hendrickson

Robert A. Hendrickson, Presiding Judge

s/ Mike Powell

Mike Powell, Judge

s/ Matthew R. Byrne

Matthew R. Byrne, Judge