CENTRAL OHIO ASSOCIATION FOR JUSTICE
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The Barrister's Bulletin

Synopses of recent decisions affecting Central Ohio

Volume 11, Issue 2

OHIO CASE NO. 2023-Ohio-1844

Williams v. Toy

The Fifth District Court of Appeals recently held that the "zone of danger" test applies in dog bite cases when the pet owner is placed in immediate risk of physical harm (i.e., the zone of danger) when their pet is injured/killed. In *Williams v. Toy*, 2023-Ohio-1844, the plaintiff, a 65-year-old woman, was walking her two dogs when a neighbor's dog got loose, ran toward her and her dogs, and mauled both of her dogs right in front of her, killing one of them. Following this incident, the plaintiff sought treatment with her primary care physician who diagnosed her with PTSD. The plaintiff filed a strict liability/negligence claim, as well as a negligent infliction of emotional distress claim. The defendant filed a motion for partial summary judgment on the negligent infliction of emotional distress (NIED) claim, arguing Ohio law does not provide for the recovery of damages for emotional distress arising from witnessing damage to one's personal property (which is what dogs are considered under Ohio law).

The trial court granted summary judgment on this issue and the case proceeded to a jury trial on the strict liability/negligence claim where the plaintiff obtained a verdict in the amount of $2,000. The plaintiff appealed the trial court's decision granting summary judgment of her NIED claim and the Fifth District reversed, finding (1) the "zone of danger" applies to dog bite claims, (2) the plaintiff is not required to experience physical injury to recover emotional distress damages in dog bite cases, and (3) emotional distress damages do not require expert testimony. Additionally, in a concurring opinion, Judge Hoffman indicated he would have gone further with the decision to recognize an exception to the general rule barring an NIED claim for witnessing damage to one's personal property, when such personal property is a living creature as opposed to an inanimate object.

OHIO CASE NO. 22AP-529

Ellison v. K2 Motors, LLC

Common Pleas No. 21CV-7908: The 10th District Court of Appeals recently decided when service of a motion for default judgment is necessary, when a corporate employee's failure to forward a complaint amounts to excusable neglect under Civ.R. 60(B), and what constitutes a meritorious defense in response to claims for fraud and violations of the Ohio Consumer Sales Practices Act, R.C. 1345.01 *et seq*. The Court specifically determined that Civ.R. 5(A), Civ.R. 55(A), and the Franklin County Local Rules of Court do not require service of a motion for default judgment upon a party who has failed to appear in the action. The Court further held that any local rule which requires service of a motion for default judgment upon a party who fails to appear in the lawsuit before that motion is filed is inconsistent with the Ohio Rules of Civil Procedure, and therefore unenforceable. In rendering judgment on the Appellant's argument regarding excusable neglect, the Court held that neglect is inexcusable in a corporate context when the complaint and summons actually reaches the corporate employee or agent responsible for the corporation's defense, and they are aware of the lawsuit before a default judgment has been entered.

Finally, the Court held that procedural arguments such as improper venue and the existence of an arbitration clause included in the contract related to the plaintiff's claims do not constitute meritorious defenses in support of a Motion for Relief from Judgement. Rather, a movant must allege a defense which addresses the substantive merits of the underlying claims. Likewise, conclusory statements or bare denials of the allegations do not constitute a meritorious defense in support of a Civ.R. 60(B) Motion. While a movant need not prove their defenses to establish a right to relief from judgment, they must allege supporting operative facts with enough specificity to allow the court to decide that the movant has a defense that could be successfully argued at trial. In rendering its decision, the Court specifically found that the existence of an "As-Is" clause or waiver is insufficient to establish a meritorious defense to "positive" fraud and violations of the Ohio Consumer Sales Practices Act.

Accordingly, the Court upheld the Franklin County Court of Common Pleas decision, awarding Appellee damages in the amount necessary to repair his vehicle to a safe condition ($8,336.10), the monthly payments Appellee had made under his lease of a replacement vehicle ($2,683.50), and $5,000 in damages for emotional distress, all trebled, for a cumulative total of $48,058.80, as well as reasonable attorney fees in the amount of $4,441.503 and costs of $389.75.

UPCOMING EVENTS

September 19, 2023
Annual Judicial Reception
5:30 p.m. – 7:00 p.m.
@ Wolf's Ridge Brewery – The Hickory Room

December 12, 2023
Annual Holiday Luncheon and Silent Auction
12:00 p.m. – 1:30 p.m.

February 13, 2024
Membership Luncheon
12:00 p.m. – 1:30 p.m.

COAJ Mission

To promote justice for individuals in all local, state, and federal courts; to support our membership; to assist the legal community; to improve the judicial system; and to serve the citizens of Central Ohio.