

TENTH DISTRICT COURT OF APPEALS
DOCKETING STATEMENT

FILED
COURT OF CLAIMS
OF OHIO

JAMES M. FLEMING
Plaintiff-Appellant/
Cross-Appellee

v.

KENT STATE UNIVERSITY
Defendant-Appellee/
Cross-Appellant

Case No. _____ 2013 NOV 13 PM 3:41
(On appeal from Court of Claims
Case No. 2011-09365)

THIS APPEAL SHOULD BE ASSIGNED TO:

- The regular calendar.
- The accelerated calendar for the reasons checked:
 - 1. No transcript required.

2. Transcript consists of 50 or fewer pages, or is of such length that its preparation and time will not be a source of delay

3. An agreed statement will be submitted within 20 days.

4. Administrative hearing record was filed with the trial court.

5. All parties to appeal agree to an assignment to the accelerated calendar.

Although the appeal meets one or more for the reasons for being assigned to the accelerated calendar, it should not be assigned to the accelerated calendar because:

1. Brief in excess of 15 pages (see Loc. R. 6) is necessary to set forth adequately the facts and argue the issues in the case.

2. Appeal concerns unique issue of law which will be of substantial precedential value in determination of similar cases.

3. Other: _____

(QUESTIONS 1 THROUGH 4 APPLY TO ALL APPEALS)

1. Is this a "premature" appeal filed after the decision (or sentence) but before the entry of judgment? See App. R. 4(A) and (B).
[] Yes [X] No

2. Is a copy of an order of the transcript from the court reporter filed herewith? [] Yes [X] No [] An App. R. 9(C) statement will be filed. [] An App. R. 9(D) statement will be filed.

3. Will the court reporter complete and file the transcript within 40 days (20 days if accelerated)? [X] Yes [] No
[] Not Applicable. The transcript has already been filed.

If not, to what date is an extension requested? _____ Is a properly supported motion for extension being filed? [] Yes [] No

4. Will the appellant's brief be filed within 20 days after transmittal of record on appeal (15 days if accelerated)?
[X] Yes [] No

If not, to what date is an extension requested? _____ Is a motion for such an extension being filed?
[] Yes [] No

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(QUESTIONS 5 THROUGH 13 APPLY TO CIVIL AND ADMINISTRATIVE APPEALS ONLY)

5. Did the judgment or order dispose of all claims by and against all parties? Yes No

If not, does the judgment or order include an express determination that there is “no just reason for delay”?
See Civ. R. 54(B). Yes No

6. Has an appeal in this trial court case been previously filed with this court Yes No If yes, what is the prior appellate court case number? _____

7. Nature of Case:

- Administrative Appeal Domestic Relations Personal Injury
- Contract Juvenile Probate
- Declaratory Judgment Medical Malpractice Other, please specify (Discrimination)

8. Is this appeal from an order of the trial court which grants or denies the adoption of a minor child or grants or denies termination of parental rights? Yes No

9. Has counsel for appellant changed on appeal? Yes No

10. Do you know of another case(s) pending before this court which raises the same issue or issues?
 Yes No If yes, please cite case(s) _____

11. Have the parties to this appeal been parties to a previous appeal filed in this court? Yes No
If yes, please cite the case number(s) _____

12. Does the appeal turn on an interpretation or application of a particular case(s) or statutes(s)?
 Yes No If yes, please cite case(s) or statute(s)

13. How would you characterize the extent of your settlement discussions prior to judgment?
 None Minimal Moderate Extensive

14. Have settlement discussions taken place since the judgment or order appealed from was entered?
 Yes No

15. Would a prehearing “settlement” conference be of any assistance to the resolution of this matter?
 Yes No Please explain (optional). _____

16. Briefly summarize the assignments of error presently anticipated to be raised on appeal, unless a statement of the assignments of error has been filed with the clerk of the trial court pursuant to App. R. 9(B). (Attach a separate sheet if necessary.)

First, the trial court erred as to liability by finding that KSU’s attempt to reassign Mr. Fleming to another position was a breach of an employment contract that said nothing about reassignment at all. Next, it erred as to liability by determining that the attempted reassignment was “so difficult or unpleasant that a reasonable person in [Mr. Fleming’s] shoes would have felt compelled to resign” as a result. That is what a plaintiff must prove to win a constructive-discharge claim. See *Yates v. Avco Corp.*, 819 F.2d 630, 636-37 (6th Cir. 1987). And Mr. Fleming proved nothing of the kind.

Attorney for Cross-Appellants

* NOTICE

THE PRIMARY PURPOSE OF A PREHEARING CONFERENCE IS TO ENCOURAGE THE PARTIES TO EXPLORE ANY POSSIBILITIES THERE MAY BE FOR SETTLEMENT OF THE CASE BEFORE INCURRING ADDITIONAL EXPENSES, OR, IF THAT IS NOT POSSIBLE, TO LIMIT THE ISSUES.

LOC. R. 15, SECTION 6, PROVIDES THAT THIS COURT MAY ASSESS REASONABLE EXPENSES, INCLUDING ATTORNEY FEES; ASSESS ALL OR A PORTION OF THE APPELLATE COSTS; OR DISMISS THE APPEAL FOR FAILURE TO COMPLY WITH PROVISIONS OF THE RULE.