

**IN THE COURT OF COMMON PLEAS
COUNTY OF SUMMIT**

MEMBER WILLIAMS, et al.)	CASE NO.: CV-2016-09-3928
)	
Plaintiffs)	JUDGE JAMES A. BROGAN
-vs-)	
)	
KISLING NESTICO & REDICK)	<u>ORDER</u>
LLC, et al.)	
)	
Defendants)	

- - -

Defendant, Dr. Sam Ghoumbrial, has moved for clarification of this Court’s order of April 10, 2019. Ghoumbrial argues that if Plaintiffs’ claims against him do not stem from the physician/patient relationship, then no claim for breach of a fiduciary duty can exist against him as such claim cannot extend beyond the medical relationship. He cites *N. Ohio Med. Specialists, LLC v. Huston*, 6th Dist. Erie No: E-09-13, 2009-Ohio-5880 (Nov. 6, 2009). In that case, the appellee-physician asserted that the appellant failed to pay a medical bill for \$5,133, but the appellant counterclaimed that appellee had a “fiduciary” duty to get insurance benefits for her and plaintiffs failed to do so. The trial court ruled in favor of the physician.

Judge Singer noted in the appellate court’s opinion that a physician undisputedly owes a fiduciary duty to his or her patients with respect to diagnosing diseases and injuries at ¶16, citing *Tracy v. Merrell Dow Pharmaceutical* 58 Ohio St.3d 147, 150 (1991). But, the court noted the appellant cited no authority that such duty extends beyond the medical relationship. Consequently, the court held appellants’ claim on a fiduciary duty fails as a matter of law.

This Court agrees that the Plaintiffs do not have a separate claim for breach of a duty against Dr. Ghoumbrial and, thus Defendant Ghoumbrial's motion for Judgment on the Pleadings as to Plaintiffs' claim for breach of fiduciary duty is hereby granted and ordered dismissed. However, undoubtedly a patient is more vulnerable to a fraudulent representation or act because of the relationship of physician and patient. Therefore, the Court's prior order of April 10, 2019 is clarified. Plaintiffs' claims for fraud, unjust enrichment and unconscionable contract survive.

IT IS SO ORDERED.



JUDGE JAMES A. BROGAN
Sitting by Assignment #18JA1214
Pursuant to Art. IV, Sec. 6
Ohio Constitution

CC: ALL COUNSEL AND PARTIES OF RECORD