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SLIP OPINION NO. 2026-OHIO-4001

KOHN, APPELLEE, v. GLENMEDE TRUST COMPANY, N.A., ET AL., APPELLANTS.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *Kohn v. Glenmede Trust Co., N.A.*, Slip Opinion No. 2026-Ohio-4001.]

Saving statute—R.C. 2305.19(A)—When the saving statute permits the commencement of a new action, the expiration of the statute of limitations for a claim that was asserted in the previous action does not preclude that claim from proceeding in the new action merely because its statute-of-limitations period expired before a previous use of the saving statute; once an action has been timely commenced, the saving statute does not limit the number of times a new action may be commenced in accordance with the statute’s terms—Appellee’s third action was filed in accordance with saving statute when second action failed other than on the merits and third action was commenced within one year—Judgment affirmed in part and reversed in part and cause remanded.

SUPREME COURT OF OHIO

(Nos. 2025-0737 and 2025-0818—Submitted April 14, 2026—Decided October 15, 2026.)

APPEAL from and CERTIFIED by the Court of Appeals for Cuyahoga County,
No. 113863, 2025-Ohio-1058.

SHANAHAN, J., authored the opinion of the court, which KENNEDY, C.J., and DEWINE, BRUNNER, DETERS, and HAWKINS, JJ., joined. FISCHER, J., concurred in judgment only.

SHANAHAN, J.

{¶ 1} The question in this case is whether Ohio’s saving statute, R.C. 2305.19(A), permits a party to refile an action when the statute of limitations on a claim asserted in that action expired before a previous use of the saving statute. Applying the plain language of the saving statute, we hold that when the terms of the saving statute are met, nothing in the statute prohibits the refile of an action—even if the statute of limitations expired for a claim asserted in that action before a previous use of the saving statute.

FACTUAL AND PROCEDURAL BACKGROUND

{¶ 2} In November 2016, appellee, Adam Kohn, commenced an action in the Cuyahoga County Court of Common Pleas (“*Kohn I*”) asserting various claims against appellants, Glenmede Trust Company, N.A. and Robert Siewert.¹ The claims related to a contract for investment-management services. Kohn voluntarily dismissed the complaint under Civ.R. 41(A)(1)(a) in September 2017. He later commenced a new action (“*Kohn II*”) within one year of that dismissal. The trial

1. Because the issues presented in this appeal do not distinguish between Glenmede Trust Company, N.A. and Robert Siewert, we refer to appellants collectively as “Glenmede.” The complaint in *Kohn I* also named as defendants several additional entities that appear to be affiliated with Glenmede, but those entities were not named in the subsequent actions filed by Kohn and are not parties to this appeal.

court dismissed *Kohn II* without prejudice under Civ.R. 41(A)(2) in August 2022. Within a year of that dismissal, in January 2023, Kohn commenced a new action against Glenmede (“*Kohn III*”).

{¶ 3} Glenmede moved for judgment on the pleadings, arguing that under then-controlling Eighth District precedent, Kohn could not rely on R.C. 2305.19(A) to commence his action a third time, because he had already invoked the saving statute when he commenced *Kohn II*. Glenmede further argued that without the benefit of the saving statute, the applicable statutes of limitations barred *Kohn III*. The trial court ultimately granted the motion for judgment on the pleadings, concluding that the saving statute did not apply to the third action and that the applicable statutes of limitations barred it.

{¶ 4} The Eighth District affirmed the trial court’s judgment in part and reversed it in part. 2025-Ohio-1058, ¶ 35 (8th Dist.). It considered each of the eight claims asserted in the *Kohn III* complaint and determined whether each claim could be “saved” under R.C. 2305.19(A). It concluded that the statute of limitations on Kohn’s negligence claims had expired before *Kohn II* was filed, *id.* at ¶ 27, and that because those claims had already received the benefit of the saving statute when *Kohn II* was filed, they were time-barred in *Kohn III*, *id.* at ¶ 27, 31. In contrast, it concluded that Kohn’s fraud, breach-of-contract, and promissory-estoppel claims had not relied on the saving statute when *Kohn II* was filed, because the statute-of-limitations periods for those claims had not yet expired, *id.* at ¶ 27, and therefore those claims were not time-barred in *Kohn III*, *id.* at ¶ 30.

{¶ 5} Recognizing that its decision conflicted with the Fifth District Court of Appeals’ decision in *McGowan v. Family Medicine, Inc.*, 2002-Ohio-4071 (5th Dist.), the Eighth District certified the following question for review:

Does the saving statute, R.C. 2305.19(A), apply to save a refiled “action” as a whole or does it apply to save refiled “claims” independently?

{¶ 6} In *McGowan*, the Fifth District concluded that the General Assembly’s use of the word “action” rather than “claims” in the saving statute demonstrated that the statute applies to the action as a whole rather than to each claim. *McGowan* at ¶ 21. The Eighth District, in its journal entry certifying the conflict here, characterized *McGowan* as holding “that the saving statute’s reference to ‘any action’ requires dismissal of all claims, including those filed within the applicable statutes of limitations, if one or more other claims in the action are time-barred.” No. 113863 (8th Dist. May 8, 2025).

{¶ 7} We accepted the certified-conflict question and Glenmede’s discretionary appeal on a similar proposition of law. As we will explain, nothing in the saving statute requires a court to conduct a claim-by-claim review to determine whether the statute of limitations for each claim had expired at the time of a previous use of the saving statute. Rather, the saving statute allows the refiling of an action when the terms of the statute are met.

ANALYSIS

{¶ 8} Both the certified-conflict question and the proposition of law focus on whether the saving statute applies to an action as a whole or separately to each claim asserted within that action. But, as we shall explain, this focus rests on a false premise.

{¶ 9} We review questions of statutory interpretation de novo. *Ceccarelli v. Levin*, 2010-Ohio-5681, ¶ 8. When statutory language is plain and unambiguous, we apply it as written. *Sauter v. Integrity Cycles, L.L.C.*, 2026-Ohio-88, ¶ 8.

{¶ 10} R.C. 2305.19(A) states that when an action has been commenced or attempted to be commenced and then fails other than upon the merits, “the plaintiff

. . . may commence a new action within one year after the date of . . . the plaintiff’s failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.”

{¶ 11} The Eighth District parsed the claims in this case and determined whether each could be “saved” under R.C. 2305.19(A). It concluded that Kohn’s negligence claims were time-barred because Kohn had already received the benefit of the saving statute as to those claims when he filed *Kohn II*. But Kohn’s fraud, breach-of-contract, and promissory-estoppel claims could proceed because Kohn had not used the saving statute to refile those claims in *Kohn II*, as the statute-of-limitations periods for those claims had not expired when *Kohn II* was filed. 2025-Ohio-1058 at ¶ 27, 30-31 (8th Dist.).

{¶ 12} The Eighth District’s approach rests on a misunderstanding of our decision in *McCullough v. Bennett*, 2024-Ohio-2783. In *McCullough*, we considered whether there is a one-use restriction inherent in R.C. 2305.19(A) and concluded that there is not. *Id.* at ¶ 2. The statute’s text drove that conclusion. R.C. 2305.19(A) permits a plaintiff to commence a new action within one year after a qualifying failure other than on the merits or within the original applicable statute-of-limitations period, whichever is later. Nothing in the statute limits that provision to a single use. *McCullough* at ¶ 2.

{¶ 13} The Eighth District interpreted *McCullough* as holding that “Ohio’s saving statute is not limited by a one-use restriction, meaning that a plaintiff may refile a claim a third time *as long as the second refiling occurs prior to the expiration of the statute of limitations.*” (Emphasis added.) 2025-Ohio-1058 at ¶ 26 (8th Dist.), citing *McCullough* at ¶ 17-21. Glenmede similarly reads *McCullough* to mean that the third action in *McCullough* was permitted under the saving statute because the plaintiff commenced his second action before the applicable statute of limitations expired. Thus, both the Eighth District and Glenmede read our holding in *McCullough*—that there is no one-use restriction—

as applying *only* to claims for which the statute of limitations had not expired before the second filing. In other words, they read *McCullough* as continuing to allow for a judicially created one-use restriction for claims on which the statute of limitations had expired at the time of the second filing.

{¶ 14} But that is not what we held in *McCullough*. In *McCullough*, we applied the plain language of the saving statute and held that it imposes no one-use restriction. *McCullough* at ¶ 13-14, 19. It is true that the plaintiff in *McCullough* had commenced his second action before the expiration of the statute of limitations, but that fact did not control our holding. Rather, we made clear that we “adhere to what the statute says,” *id.* at ¶ 2.

{¶ 15} So what does the statute say? Under the saving statute, when *an action* is commenced or attempted to be commenced, and the plaintiff’s *action* later fails other than upon the merits, “the plaintiff . . . may commence a *new action* within one year after the date of . . . the plaintiff’s failure otherwise than upon the merits or within the period of the original applicable statute of limitations, whichever occurs later.” (Emphasis added.) R.C. 2305.19(A). R.C. Ch. 2307, which governs common pleas courts, provides that “[a]n action is an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense.” R.C. 2307.01. That definition confirms that an “action” is the judicial proceeding, and not each individual claim asserted within the complaint initiating the proceeding. Nothing in the saving statute provides that it may be used only once. And nothing in the saving statute provides that it applies only when a second filing of an action occurred within the original statute-of-limitations period. Rather, once an action has been timely commenced, R.C. 2305.19(A) does not limit the number of times a new action may be commenced in accordance with the statute’s terms. If an action commenced in accordance with the saving statute subsequently fails other than on

the merits, R.C. 2305.19(A) permits the plaintiff to commence a new action within one year of that failure or within the original applicable statute-of-limitations period, whichever is later.

{¶ 16} Glenmede’s reliance on *Howard v. Allen*, 30 Ohio St.2d 130 (1972), does not alter this conclusion. *Howard* addressed whether an original action commenced in another state could satisfy the requirements of Ohio’s saving statute. We determined that it could not, explaining that “the original action” must have been commenced or attempted to be commenced in Ohio within the applicable statute-of-limitations period. *Id.* at 134. *Howard* did not address whether an action commenced in accordance with the saving statute may serve as the preceding action for a later application of the saving statute.

{¶ 17} Accordingly, we reiterate that the saving statute does not contain a one-use restriction. The General Assembly could have included such a restriction. But it did not. Indeed, in *McCullough*, we recognized the concern that without a one-use restriction, a plaintiff might attempt to extend the statute of limitations through serial dismissals and refilings. 2024-Ohio-2783 at ¶ 20. But we did not respond to that concern by adding a restriction to R.C. 2305.19(A) that the General Assembly did not enact. Instead, we observed that Civ.R. 41 contains safeguards against abusive refilings. *Id.* at ¶ 21-22.

{¶ 18} Thus, when the saving statute permits the commencement of a new action, the expiration of the statute of limitations for a claim that was asserted in the previous action does not preclude that claim from proceeding in the new action merely because its statute-of-limitations period had also expired before a previous use of the saving statute. As relevant here, R.C. 2305.19(A) requires that (1) the preceding action was commenced or attempted to be commenced, (2) that preceding action failed other than on the merits, and (3) the new action was commenced within one year of that failure or within the original applicable statute of limitations, whichever occurs later.

{¶ 19} *Kohn II* was timely commenced under the saving statute. It was dismissed without prejudice (i.e., the action failed other than on the merits) under Civ.R. 41(A)(2) on August 2, 2022. *Kohn III* was commenced on January 3, 2023—within one year of *Kohn II*’s dismissal. *Kohn III* was therefore commenced in accordance with R.C. 2305.19(A).

{¶ 20} Thus, the Eighth District was correct in reversing the trial court’s judgment dismissing Kohn’s fraud, breach-of-contract, and promissory-estoppel claims. But the Eighth District erred by affirming the dismissal of Kohn’s negligence claims on the ground that, unlike the other claims, the statute-of-limitations periods for those claims had expired before *Kohn II*, and those claims therefore had already received the benefit of the saving statute and could not receive that benefit again.

{¶ 21} Finally, we note that Kohn did not file a cross-appeal challenging the Eighth District’s judgment affirming the trial court’s dismissal of his negligence claims. “An appellee who does not cross-appeal generally cannot oppose the final judgment on appeal, or attack it to enlarge his own rights or lessen the rights of his adversary.” *Kaplysh v. Takieddine*, 35 Ohio St.3d 170, 175 (1988); *see also* App.R. 3(C)(1). But in this case, in addition to accepting Glenmede’s appeal, we also accepted the conflict question certified by the Eighth District. Article IV of the Ohio Constitution grants this court the power to “review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to section 3(B)(4) of this article.” Ohio Const., art. IV, § 2(B)(2)(f); *see also* Ohio Const., art. IV, § 3(B)(4) (providing that in a certified-conflict case, “the judges [of a court of appeals] shall certify the record of the case to the supreme court for review and final determination”). “Certification of the record of the case to the [Ohio] Supreme Court, because of a conflict between judgments of the Courts of Appeals upon any question, brings the entire case, not merely the certified question, before this court for review.” *Brown v. Borchers Ford, Inc.*, 50 Ohio St.2d 38, 39

(1977). Because this is a certified-conflict case, we exercise our authority to reverse the portion of the court of appeals' judgment that affirmed the trial court's dismissal of Kohn's negligence claims; we affirm the portion of the judgment that reversed the trial court's dismissal of Kohn's fraud, breach-of-contract, and promissory-estoppel claims.

CONCLUSION

{¶ 22} We affirm the judgment of the Eighth District Court of Appeals in part and reverse it in part. We conclude that the saving statute applied to Kohn's entire action. We remand the case to the trial court for further proceedings consistent with this opinion.

Judgment affirmed in part
and reversed in part
and cause remanded.

The Law Office of Jaye M. Schlachet and Jaye M. Schlachet; and Flowers & Grube, Louis E. Grube, and Michael J. Factor, for appellee.

Reminger Co., L.P.A., Brian P. Nally, Brian D. Sullivan, and Brianna M. Prislipsky, for appellants.

D. Andrew Wilson, Attorney General, Mathura J. Sridharan, Solicitor General, and Jana M. Bosch and Stephen P. Carney, Deputy Solicitors General, urging reversal for amicus curiae, Ohio Attorney General D. Andrew Wilson.
