

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

WALLACE EQUINE SERVICES, LLC,

Plaintiff-Appellant,

v.

THE J. ARNOLD PROPERTY MANAGEMENT GROUP, LLC,

Defendant-Appellee.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 22 MA 0035**

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Motion to Certify a Conflict

**BEFORE:**

David A. D'Apolito, Cheryl L. Waite, Mark A. Hanni, Judges.

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**JUDGMENT:**

Overruled.

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*Atty. Jason M. Rebraca*, Johnson & Johnson Law Firm, 12 West Main Street, Canfield, Ohio 44406, for Plaintiff-Appellant and

*Atty. Matthew C. Giannini*, 1040 South Commons Place, Suite 200, Youngstown, Ohio 44514, for Defendant-Appellee.

Dated: July 13, 2023

**PER CURIAM.**

{¶1} Appellant, Wallace Equine Services, LLC (“Wallace”), filed a motion pursuant to App.R. 25 to certify this case to the Supreme Court of Ohio on the basis of a conflict. Wallace asserts this court’s decision in *Wallace Equine Services, LLC v. The J. Arnold Property Management Group, LLC*, 7th Dist. Mahoning No. 22 MA 0035, 2023-Ohio-1498 (Waite, J., dissenting), is in conflict with decisions of the Eighth, Ninth, Tenth, and Twelfth District Courts of Appeal: *Hanak v. Kraus*, 8th Dist. Cuyahoga No. 110884, 2022-Ohio-1941; *In re Z.L.*, 8th Dist. Cuyahoga No. 110617, 2022-Ohio-1234; *Van Meter v. Stebner*, 9th Dist. Medina No. 2348-M, 1994 WL 716230 (Dec. 28, 1994); *Countrywide Home Loans Servicing, L.P. v. Murphy-Kesling*, 9th Dist. Summit No. 25297, 2010-Ohio-6000; *Waterford Tower Condominium Assn. v. TransAmerica Real Estate Group*, 10th Dist. Franklin No. 05AP-593, 2006-Ohio-508; *State v. Welch*, 10th Dist. Franklin No. 19AP-753, 2020-Ohio-5447; *National Collegiate Student Loan Trust-1 v. Payne*, 10th Dist. Franklin No. 21AP-628, 2022-Ohio-2636; *Herbert v. Herbert*, 12th Dist. Butler No. CA2011-07-132, 2012-Ohio-2147; and *Whittle v. Davis*, 12th Dist. Butler No. CA2013-08-153, 2014-Ohio-445.<sup>1</sup>

{¶2} App.R. 25, “Motion to certify a conflict, states in part:

(A) A motion to certify a conflict under Article IV, Section 3(B)(4) of the Ohio Constitution shall be made in writing no later than ten days after the clerk has both mailed to the parties the judgment or order of the court that creates a conflict with a judgment or order of another court of appeals and made note on the docket of the mailing, as required by App. R. 30(A). \* \* \* A motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.

App.R. 25(A).

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<sup>1</sup> Appellee, The J. Arnold Property Management Group, LLC (“Arnold”) filed a response. Wallace filed a reply.

{¶3} Article IV, Section 3, “Organization and jurisdiction of courts of appeals, states in part:

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals of the state, the judges shall certify the record of the case to the supreme court for review and final determination.

Ohio Const. Article IV, Section 3(B)(4).

Hence, the following conditions must be met before and during certification pursuant to Section 3(B)(4), Article IV of the Ohio Constitution:

First, the certifying court must find that its judgment is in conflict with the judgment of a court of appeals of another district and the asserted conflict must be “upon the same question.” Second, the alleged conflict must be on a rule of law – not facts. Third, the journal entry or opinion of the certifying court must clearly set forth that rule of law which the certifying court contends is in conflict with the judgment on the same question by other district courts of appeals. (Emphasis deleted.)

*Whitelock v. Gilbane Bldg. Co.*, 66 Ohio St.3d 594, 613 N.E.2d 1032, (1993), paragraph one of the syllabus. In addition, the issue proposed for certification must be dispositive of the case. *State ex rel. Davet v. Sutula*, 131 Ohio St.3d 220, 2012-Ohio-759, 963 N.E.2d 811, ¶ 2.

“Factual distinctions between cases do not serve as a basis for conflict certification.” *Id.* at 599. In *Whitelock*, the Ohio Supreme Court dismissed the appeal on the grounds that the conflict was improperly certified and urged appellate courts to certify “only those cases where there is a true and actual conflict on a rule of law.” *Id.*

*State v. Rice*, 7th Dist. Mahoning No. 21 MA 0085, 2022-Ohio-4176, ¶ 4-5.

{¶4} This court decided *Wallace* on May 4, 2023. *Wallace*, 2023-Ohio-1498. *Wallace* filed its motion to certify a conflict eight days later on May 12, 2023. Thus, *Wallace*'s motion is timely filed. App.R. 25(A). *Wallace* cites nine judgments alleged to be in conflict with the judgment of this court. *Id.*; (5/12/2023 Appellant's Motion to Certify Conflict, p. 1); *Hanak*, 2022-Ohio-1941; *In re Z.L.*, 2022-Ohio-1234; *Van Meter*, 1994 WL 716230; *Countrywide*, 2010-Ohio-6000; *Waterford*, 2006-Ohio-508; *Welch*, 2020-Ohio-5447; *National Collegiate*, 2022-Ohio-2636; *Herbert*, 2012-Ohio-2147; and *Whittle*, 2014-Ohio-445. *Wallace* also specifies two issues proposed for certification pursuant to App.R. 25(A):

1. Whether appellate review is limited, pursuant to App.R. 12(A), to the record as it existed at the time the judgment was rendered or may it consider filings after the judgment was rendered.
2. Whether a trial court must find that all the GTE requirements must be met prior to vacating a judgment.

(5/12/2023 Appellant's Motion to Certify Conflict, p. 3).

{¶5} In *Wallace*, this court stated in detail:

In its sole assignment of error, *Wallace* asserts the trial court erred in vacating the default judgment entry. *Wallace* contends the court abused its discretion for the reasons that Arnold's motion to vacate did not cite to grounds for relief under Civ.R. 60 and it did not allege a meritorious defense to the complaint. (7/1/2022 Appellant's Brief, p. 8).

Appellate courts review a trial court's decision to grant or deny a motion to vacate default judgment for an abuse of discretion. *Taylor v. Grace Services, Inc.*, 7th Dist. Columbiana No. 91-C-21, 1992 WL 37806, \*2 (Feb. 26, 1992). Abuse of discretion implies the trial court's decision is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

In support of its position that the trial court did not abuse its discretion in granting its motion to vacate, Arnold sets forth the following procedural explanation:

“Once the Complaint for monetary damages was, in fact, filed with the Mahoning County Common Pleas Court by the Plaintiff/Appellant (Wallace), the Defendant/Appellee (Arnold) filed a Leave to File an Answer and Counterclaim electronically. For whatever reason, when the clerk processed the document, it only processed the Motion for Leave and the Judgment Entry and did not file the Answer and Counterclaim unbeknownst to Defendant/Appellee’s (Arnold’s) counsel. A copy of the Answer and Counterclaim as well as the Motion and Entry were forwarded to Plaintiff/Appellant’s (Wallace’s) counsel. Plaintiff/Appellant (Wallace) then filed a Motion for Default Judgment which was granted at that time. Once the Defendant/Appellee (Arnold) became aware of what had occurred the Defendant/Appellee (Arnold) then filed a Motion to Vacate and (an) Answer and Counterclaim once again. The court granted it based upon the fact that the matter should be resolved based upon the facts of the case and not a hypertechnicality.” (7/28/2022 Appellee’s Brief, p. 5-6).

This court agrees with Arnold’s position and the trial court’s decision. “Fairness and justice are best served when a court disposes of a case on the merits.” *DeHart v. Aetna Life Ins. Co.*, 69 Ohio St.2d 189, 193 (1982). The main objective of justice is that cases should be decided on their merits rather than upon procedural niceties and technicalities. *Id.* at 192-193; *Perotti v. Ferguson*, 7 Ohio St.3d 1, 3-4 (1983).

This case was not left outstanding for a lengthy time nor did it cause undue hardship or prejudice to Wallace. Rather, the record reveals this matter transpired within a relatively short timeframe, as outlined by the dates addressed above. In addition, contrary to Wallace’s position, we determine that by filing an answer and counterclaim, Arnold presented a meritorious

defense. See generally *Cantrell v. Trabbic*, 6th Dist. Fulton No. F-81-7, 1981 WL 5419, \*1 (Oct. 16, 1981); *Starr v. White*, 1st Dist. Hamilton No. C-840821, 1985 WL 11461, \*1 (Sept. 4, 1985); *Magicable, Inc. v. Lynn Telecommunications, Inc.*, 11th Dist. Portage No. 1603, 1986 WL 4225, \*2 (Apr. 4, 1986).

This court stresses that actions should be examined on a case-by-case basis. We emphasize that our decision to affirm here is limited to the particular facts and procedure in this case. See, e.g., *Covarrubias v. Lowe’s Home Improvement, L.L.C.*, 8th Dist. Cuyahoga No. 109819, 2021-Ohio-1658, ¶ 33. Upon consideration, the trial court did not abuse its discretion in granting Arnold’s motion to vacate as fundamental fairness requires that this case be decided on its merits. *DeHart, supra*, at 192-193; *Perotti, supra*, at 3-4.

*Wallace*, 2023-Ohio-1498, ¶ 9-14.

{¶6} Thus, this court stressed the following: “actions should be examined on a case-by-case basis”; “our decision to affirm here is limited to the particular facts and procedure in this case”; and “the trial court did not abuse its discretion in granting Arnold’s motion to vacate as fundamental fairness requires that this case be decided on its merits.” *Id.* at ¶ 14. Implicit in our decision is the fact that the *GTE* test would not be necessary as that test applies in situations where a final decision has been made. See *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976). In contrast, we found that “fundamental fairness requires that this case be decided on its merits.” *Wallace* at ¶ 14.

{¶7} In any event, Arnold’s February 7, 2022 electronic filing of its motion to file instanter, requesting the trial court to allow it to file an answer and counterclaim instanter, reveal that Arnold had a meritorious defense or claim to present if relief were granted. Thus, Arnold filed its answer and counterclaim contemporaneously with the motion to file instanter, but for reasons unknown to Arnold, the clerk failed to process the answer and counterclaim at that time. The filing of the motion to file instanter demonstrates there was a meritorious defense. As stated by this court, “This case was not left outstanding for a

lengthy time nor did it cause undue hardship or prejudice to Wallace. Rather, the record reveals this matter transpired within a relatively short timeframe[.]” *Id.* at ¶ 13.

{¶8} Wallace believes this court’s decision in *Wallace*, 2023-Ohio-1498, is in conflict with decisions of the Eighth, Ninth, Tenth, and Twelfth District Courts of Appeal. Upon review, we disagree.

{¶9} The Eighth District in *Hanak* affirmed the trial court’s decision dismissing the appellants’ medical-malpractice action. *Hanak*, 2022-Ohio-1941, ¶ 1. In that case, the appellants, inter alia, did not attach an affidavit of merit to the complaint and the appellees filed Civ.R. 12(B)(6) motions to dismiss. *Id.* at ¶ 2-3. The trial court granted the motions and the Eighth District found no error. *Id.* at ¶ 6. The appellants also failed to refile the matter either within one year of their voluntary dismissal or within the original one-year medical malpractice statute of limitations. *Id.* The facts in *Wallace* are different from those in *Hanak* and this court did not rule opposite to the holding of the Eighth District on a rule of law. *Wallace* does not conflict with *Hanak*.

{¶10} The Eighth District in *In re Z.L.* affirmed in part, reversed in part, and remanded the juvenile court’s judgment denying the father’s motion for relief from judgment regarding child support and motion for shared parenting. *In re Z.L.*, 2022-Ohio-1234, ¶ 1. The Eighth District found the father was unable to obtain information regarding the mother’s military income in the exercise of due diligence within the prescribed time limit, and thus, the father established a meritorious defense under Civ.R. 60(B)(2). *Id.* at ¶ 23. The Eighth District remanded the matter for the juvenile court to recalculate the amount of child support. *Id.* at ¶ 25. The facts in *Wallace* are different from those in *In re Z.L.* and this court did not rule opposite to the holding of the Eighth District on a rule of law. *Wallace* does not conflict with *In re Z.L.*

{¶11} The Ninth District in *Van Meter* affirmed the trial court’s judgment for \$3,200 plus interest in favor of the appellee on her contract claim in which the appellee loaned money to the appellant’s wife in order to avoid a foreclosure. *Van Meter*, 1994 WL 716230, \*1. The Ninth District found that the appellant failed to file a copy of the transcript with the trial court. *Id.* at \*2. The Ninth District held that “[b]ecause [the appellant] did not meet Civ.R. 53(E)(6)’s requirements, the trial court was justified in adopting the referee’s findings of fact without further consideration.” *Id.* In making its determination, the Ninth

District cited App.R. 9(A): “(a) transcript of proceedings before a referee is not a part of the record on appeal unless it has been filed in support of a party’s objections to the referee’s report and recommendation.” *Id.* The facts in *Wallace* are different from those in *Van Meter* and this court did not rule opposite to the holding of the Ninth District on a rule of law. *Wallace* does not conflict with *Van Meter*.

{¶12} The Ninth District in *Countrywide* affirmed the trial court’s judgment denying the pro se appellant’s motion to vacate judgment in a foreclosure case. *Countrywide*, 2010-Ohio-6000, ¶ 1-2. The Ninth District found that the appellant failed to comply with App.R. 4(A) and Civ.R. 13 through 15. *Id.* at ¶ 6, 8. The Ninth District also found that the trial court did not abuse its discretion in overruling the appellant’s motion to vacate under Civ.R. 60(B)(3) because her motion did not contain specific allegations of fraud. *Id.* at ¶ 12-13. The facts in *Wallace* are different from those in *Countrywide* and this court did not rule opposite to the holding of the Ninth District on a rule of law. *Wallace* does not conflict with *Countrywide*.

{¶13} The Tenth District in *Waterford* affirmed the trial court’s judgment denying the appellant’s motion to set aside default judgment and motion for relief from judgment. *Waterford*, 2006-Ohio-508, ¶ 1. A partner was personally served but handed the service packets back to the process server. *Id.* at ¶ 8. The Tenth District noted that “[a] plaintiff may perfect service upon a defendant partnership by serving the partnership by certified or express mail at any of its usual places of business or by serving a partner.” *Id.* at ¶ 16. The Tenth District also determined the appellant was validly served via ordinary mail. *Id.* at ¶ 30. The facts in *Wallace* are different from those in *Waterford* and this court did not rule opposite to the holding of the Tenth District on a rule of law. *Wallace* does not conflict with *Waterford*.

{¶14} The Tenth District in *Welch* affirmed the trial court’s judgment denying a post-sentencing motion to withdraw a guilty plea on the grounds of res judicata. *Welch*, 2020-Ohio-5447, ¶ 1. No transcript was docketed or appeared in the file before the trial judge reached its decision. *Id.* at ¶ 3. The Tenth District agreed with the trial court that the appellant had the opportunity to raise the problems with his plea and to appeal those issues, yet failed to do so. *Id.* at ¶ 16. The facts in *Wallace* are different from those in



*Welch* and this court did not rule opposite to the holding of the Tenth District on a rule of law. *Wallace* does not conflict with *Welch*.

{¶15} The Tenth District in *National Collegiate* affirmed the trial court’s judgment overruling the appellant’s objections to a magistrate’s decision and denying her motion to set aside judgment on a promissory note. *National Collegiate*, 2022-Ohio-2636, ¶ 1. At issue was whether the appellee offered testimony and evidence “it knew to be false” at the bench trial before the magistrate in 2018. *Id.* at ¶ 7. The Tenth District found that the appellant had “not shown a fraud upon the court.” *Id.* at ¶ 29. The facts in *Wallace* are different from those in *National Collegiate* and this court did not rule opposite to the holding of the Tenth District on a rule of law. *Wallace* does not conflict with *National Collegiate*.

{¶16} The Twelfth District in *Herbert* affirmed the trial court’s judgment ordering the mother to reimburse the father for a portion of their son’s college tuition, room, board, and books. *Herbert*, 2012-Ohio-2147, ¶ 1. The Twelfth District determined the mother was precluded from asserting her arguments on appeal because a transcript of the hearing before the magistrate was not provided to the trial court. *Id.* at ¶ 12. The facts in *Wallace* are different from those in *Herbert* and this court did not rule opposite to the holding of the Twelfth District on a rule of law. *Wallace* does not conflict with *Herbert*.

{¶17} Finally, the Twelfth District in *Whittle* affirmed the trial court’s judgment denying the appellants’ motion to vacate default judgment. *Whittle*, 2014-Ohio-445, ¶ 1. The matter involved a consumer transaction and financing agreement for the purchase of a BMW. *Id.* at ¶ 2. Misrepresentations regarding the financing and condition of the vehicle were alleged in the appellee’s complaint. *Id.* The Twelfth District held that the “appellants’ failure to file an answer after being served with the summons and complaint because they believed the matter would ‘go to trial’ without them needing to ‘file papers’ with the common pleas court does not constitute excusable neglect[.]” *Id.* at ¶ 26. The facts in *Wallace* are different from those in *Whittle* and this court did not rule opposite to the holding of the Twelfth District on a rule of law. *Wallace* does not conflict with *Whittle*.

{¶18} Upon consideration, we find no conflict between the decision made by this court on May 4, 2023 and the cases cited by *Wallace* from our Sister Courts. Accordingly, *Wallace*’s motion to certify a conflict is hereby overruled.

**JUDGE DAVID A. D’APOLITO, Concur**

**JUDGE CHERYL L. WAITE, Dissents with Dissenting Opinion**

**JUDGE MARK A. HANNI, Concur**

Waite, J., dissenting.

{¶19} Based on my dissent in the underlying opinion, I would grant the motion to certify a conflict in this case. The majority’s reliance on a presumption that Appellee possessed a meritorious defense merely because it requested to file an answer *instanter* does not comport with the well-established law establishing the requirements to support a Rule 60(B) filing. Hence, in my view, this motion should be granted.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**