[Cite as *Blakely v. Goodyear Tire & Rubber Co.*, 2019-Ohio-2598.]

STATE OF OHIO))ss: COUNTY OF SUMMIT)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
LYNN BLAKELY, Executrix for the Estate of GARRY BLAKELY Appellant v. THE GOODYEAR TIRE & RUBBER CO. Appellee	C.A. No. 28733 APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF SUMMIT, OHIO CASE No. AC2017-01-0225

DECISION AND JOURNAL ENTRY

Dated: June 28, 2019

TEODOSIO, Presiding Judge.

{¶1} Lynn Blakely, executrix for the estate of Garry Blakely, appeals the judgment of the Summit County Court of Common Pleas granting summary judgment in favor of The Goodyear Tire & Rubber Company. We reverse and remand.

I.

{¶2} Beginning in 1946, The Goodyear Tire & Rubber Company ("Goodyear") leased premises known as Plant B to Goodyear Aerospace Corporation ("Aerospace"). In 1967, Garry Blakely worked for Aerospace at Plant B, which included both the Vinyl Division, a division of Goodyear, and the Wheel and Brake Division, a division of Aerospace. Both divisions were involved in the manufacture of aircraft brake assemblies. Brake linings were formed in the Vinyl Division and then taken to the Wheel and Brake Division where the linings were drilled, shaped, and incorporated into brake assemblies. Mr. Blakely worked in the Wheel and Brake Division.

{¶3} In 2014, Mr. Blakely was diagnosed with malignant mesothelioma. He subsequently filed a complaint for asbestos exposure against multiple defendants, including Goodyear, which was named both individually and as a successor-in-interest to Aerospace. The complaint included claims for product liability, supplier liability, and premises liability. Goodyear filed motions for summary judgment on these claims, which were granted by the trial court; however, Mr. Blakely dismissed the case prior to any final judgment.

{¶4} In 2017, Mr. Blakely's estate ("the estate") refiled the action against Goodyear. The trial court again granted summary judgment in favor of Goodyear on the claims for product liability, supplier liability, and premises liability, and issued its final order on July 11, 2017. The estate now appeals, raising four assignments of error.

II.

{¶5} Appellate review of an award of summary judgment is de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Summary judgment is appropriate under Civ.R. 56 when: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977), citing Civ.R. 56(C). A court must view the facts in the light most favorable to the non-moving party and must resolve any doubt in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358–359 (1992). A trial court does not have the liberty to choose among reasonable inferences in the context of summary judgment, and all competing inferences and questions of credibility must be resolved in the nonmoving party's favor. *Perez v. Scripps–Howard Broadcasting Co.*, 35 Ohio St.3d 215, 218 (1988).

{¶6} The Supreme Court of Ohio has set forth the nature of this burden-shifting paradigm:

> [A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case. Rather, the moving party must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) which affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. However, if the moving party has satisfied its initial burden, the nonmoving party then has a reciprocal burden outlined in Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.

Dresher v. Burt, 75 Ohio St.3d 280, 293 (1996).

ASSIGNMENT OF ERROR ONE

> THE TRIAL COURT ERRED WHEN IT RULED ON MOTIONS NOT FILED IN THE INSTANT CASE AND ADOPTED RULINGS FROM A PREVIOUSLY DISMISSED CASE IN VIOLATION OF OHIO CIVIL RULE 41(A).

{¶7} In its first assignment of error, the estate argues the trial court erred in ruling on a motion filed in the previously dismissed case and in adopting its analysis and rulings from that case. We disagree.

{¶8} On March 24, 2017, Goodyear filed a "NOTICE OF FILING CERTIFIED COPIES OF DOCUMENTS PREVIOUSLY FILED IN *BLAKELY V. GOODYEAR TIRE*, SUMMIT COUNTY CASE NO. AC 2014-07-3155." Included among these documents were motions for partial summary judgment on Mr. Blakely's claims for premises liability, product liability, and supplier liability; the response and reply briefs to said motions; related exhibits; and the trial court's rulings. Also filed on March 24, 2017, was the "MOTION OF THE

GOODYEAR TIRE & RUBBER COMPANY FOR SUMMARY JUDGMENT ON CLAIMS PREVIOUSLY RULED ON BY THIS COURT." In its motion, Goodyear requested that the trial court adopt its previous rulings and grant summary judgment in favor of Goodyear on the estate's refiled claims for premises liability, products liability, and supplier liability. The motion incorporated Goodyear's motions for partial summary judgment filed in the prior case, along with all associated briefings. The estate filed a brief in opposition, and Goodyear followed with a reply brief.

{¶9} In its judgment entry, the trial court noted that in support of its motion for summary judgment, Goodyear filed certified copies of the relevant portions of the record and transcripts from the prior case. The court further noted that the estate had "responded in opposition" and that "all matters [had] been fully briefed and supplemented with evidence for review." The trial court proceeded to grant summary judgment in favor of Goodyear on all claims. In its analysis of each claim, the trial court noted that it adopted its previous analysis and decision from its entries in the prior case, which were attached as exhibits and incorporated by the text of the opinion. In addition, the trial court added new analysis, and entered judgment independently of its prior entries.

{¶10} Contrary to the estate's assertion, Goodyear filed a motion for summary judgment in the re-filed case. Furthermore, the trial court noted that the estate had responded in opposition and with supplemented evidence for the court's review. We are cognizant of the fact that the trial court could not rely on its previous judgments for the purposes of res judicata, but it did not do so here. These prior entries were attached and incorporated for the content of their analysis, rather than the force of their judgment. The trial court entered judgment independent of the exhibits and did not merely adopt the judgment from a past entry.

{¶11} The estate's first assignment of error is overruled.

ASSIGNMENT OF ERROR TWO

> THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT ON PREMISES LIABILITY PURSUANT TO [R.C. 2307.941].

{¶12} In its second assignment of error, the estate argues the trial court erred in granting summary judgment on its claim for premises liability. We agree.

{¶13} The estate contends that genuine issues of material fact exist as to whether Goodyear owed Mr. Blakely a duty to keep its premises safe from hazards and a duty to provide notice of any concealed dangers of which Goodyear knew existed and whether Goodyear breached that duty of care. Specifically, the estate argues that the trial court erred in its reliance upon R.C. 2307.941 as being dispositive of the claim.

{¶14} R.C. 2307.941 provides, in pertinent part:

> (A) The following apply to all tort actions for asbestos claims brought against a premises owner to recover damages or other relief for exposure to asbestos on the premises owner's property:
>
> * * *
>
> (2) If exposure to asbestos is alleged to have occurred before January 1, 1972, it is presumed that a premises owner knew that this state had adopted safe levels of exposure for asbestos and that products containing asbestos were used on its property only at levels below those safe levels of exposure. To rebut this presumption, the plaintiff must prove by a preponderance of the evidence that the premises owner knew or should have known that the levels of asbestos in the immediate breathing zone of the plaintiff regularly exceeded the threshold limit values adopted by this state and that the premises owner allowed that condition to persist.

{¶15} The trial court found that the estate failed to proffer any evidence to rebut the presumption, and that there were no genuine issues of material fact because it lacked "evidence that Goodyear Tire knew or should have known that the levels of asbestos in the immediate

breathing zone of Mr. Blakely regularly exceeded the threshold limit values adopted by this state and that the premises owner allowed that condition to persist."

{¶16} Because the events constituting the basis of this action occurred prior to January 1, 1972, there is a presumption that Goodyear knew: (1) that the State of Ohio had adopted safe levels of exposure for asbestos; and (2) that products containing asbestos were used on its property only at levels below those safe levels of exposure. The estate argues that it should be permitted to argue to a jury that Goodyear knew that the standard in place was not a safe level and yet continued to expose employees, including Mr. Blakely, to unsafe levels of asbestos. Thus, the question before us is essentially whether the presumption is dispositive of the estate's claim for premises liability, or if its theory of the claim survives despite this presumption.

{¶17} The trial court acknowledged the estate's theory of the case, stating:

> [The estate did] not necessarily disagree that Goodyear knew of the threshold limit values or that Goodyear was likely operating under those limits. But, Plaintiffs proffered evidence they believe demonstrates Goodyear knew the State of Ohio's adopted safe levels for exposure to asbestos were not necessarily safe levels. That evidence is, of course challenged.

The trial court went on to conclude that the unrebutted presumption under R.C. 2307.941 resulted in an absence of genuine issues of material fact as to an essential element of the claim. We do not agree that the unrebutted presumption under R.C. 2307.941 must result in this outcome.

{¶18} Under the estate's theory of liability, the unrebutted presumption of compliance with the Ohio standard is not conclusive of non-liability. While we agree that the presumption is valid, the analysis in this case does not end there. As noted by the trial court, the estate proffered evidence they believed demonstrated Goodyear knew the State of Ohio's adopted safe levels for exposure to asbestos were not necessarily safe levels. The analysis of Goodyear's duty to keep

its premises safe from hazards and its duty to provide notice of any concealed dangers of which it knew existed, and whether Goodyear breached any such duty of care, must take into consideration the estate's theory of liability. We conclude the trial court erred in finding that the unrebutted presumption, in and of itself, was dispositive of the claim under the estate's theory of the case.

{¶19} In the judgment entry for the refiled case, the trial court further addressed the issue of commercial landlord liability and whether or not Goodyear had control over the premises at issue that it leased to Aerospace. "[T]the test to be applied in every case involving the liability of a property owner for injuries arising from the defective condition of premises under lease to another is whether the landowner was in possession or control of the premises, or the part thereof, the disrepair of which caused the injury." *Wills v. Frank Hoover Supply*, 26 Ohio St.3d 186, 188 (1986).

{¶20} In its July 11, 2017, judgment entry, the trial court found that "Plaintiffs lack[ed] evidence that Goodyear Tire exercised any control over Plant B." As we have noted, this entry also adopted the trial court's previous analysis of the estate's claims from its entries in the prior case. Under its discussion of premises liability in the July 2017 entry, the trial court specifically "adopt[ed] its previous analysis of the premises liability claim from *Blakely I*, set forth in the October 6, 2015[,] Judgment Entry and the November 5, 2015[,] Entry & Order granting Plaintiffs' Motion for Clarification." In that discussion of the claim for premises liability in the judgment entry of October 6, 2016, the trial court found that the plaintiffs had responded to Goodyear's motion for summary judgment on the claim "by proffering evidence which creates a genuine issue of material fact about the control of the premises of Plant B." This finding reached in the October 2016 entry is incompatible with the findings of the July 2017 entry, and because

the 2016 entry has been incorporated by the 2017 entry, we are left with an entry containing contradictory findings and therefore in need of further analysis and clarification.

{¶21} The estate's second assignment of error is sustained.

ASSIGNMENT OF ERROR THREE

> THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT ON PRODUCTS LIABILITY BASED SOLELY ON *MOELLER V. AUGLAIZE* * * *.

{¶22} In its third assignment of error, the estate argues the trial court erred in granting summary judgment on its products liability claim based solely on *Moeller v. Auglaize Erie Machine Co.*, 3d Dist. Auglaize No. 2-08-10, 2009-Ohio-301. We agree.

{¶23} "Product liability plaintiffs * * * must establish that a defect existed in the product when the defendant manufactured and sold the product; that the defect existed when the product left the defendant's hands; and that the defect proximately caused the plaintiff's injury and/or loss." *Grieshop v. Hoyng*, 3d Dist. Mercer No. 10-06-27, 2007-Ohio-2861, ¶ 23. The trial court cited to *Moeller* for the proposition that "the product must have left the manufacturer's control in order for the plaintiff to establish a product liability claim." *Moeller* at ¶ 20. The trial court went on to find that "[a]ll of Mr. Blakely's work around asbestos containing brake linings occurred during the manufacturing process so Plaintiff's claim is barred as a matter of law."

{¶24} The brake linings at issue were manufactured by the Vinyl Division of Goodyear. They were then sent to the Wheel and Brake Division of Goodyear Aerospace Corporation, where the brake linings were ground and drilled. We note that R.C. 2307.71(A)(9) defines "manufacturer" as "a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild *a product or a component of a product*." (Emphasis added.) A manufacturer is therefore not limited by definition to one engaged only with the production of a

final product, but instead may produce a component of a product. Under R.C. 2307.71(A)(12)(a), a "product" is defined as:

> any object, substance, mixture, or raw material that constitutes tangible personal property and that satisfies all of the following:
>
> > (i) It is capable of delivery itself, or as an assembled whole in a mixed or combined state, or as a component or ingredient.
> >
> > (ii) It is produced, manufactured, or supplied for introduction into trade or commerce.
> >
> > (iii) It is intended for sale or lease to persons for commercial or personal use.

{¶25} Rather than determining whether a product or product component, i.e., the brake linings, had left the control of a manufacturer, i.e. Goodyear, the trial court instead found that Mr. Blakely's exposure "occurred during the manufacturing process." In this instance, we do not believe the two concepts are identical or that they necessarily lead to the same conclusion. During his exposure while working for Aerospace, the brake linings were no longer in possession of Goodyear itself, but of Aerospace. To the extent that the brake linings were still in the manufacturing process, that process was being undertaken by Aerospace and not Goodyear. The application of *Moeller* does not hinge upon whether the brake linings were in the manufacturing process by Aerospace, but rather, whether they were a product or the component of a product that had left Goodyear's control. *Compare Taylor v. Goodyear Tire & Rubber Co.*, 9th Dist. Summit No. 28620, 2018-Ohio-2179, ¶ 22-23 (noting that this Court could not say that *Moeller* stands for the proposition that a product that is still in the manufacturing process is, as a matter of law, under the control of the manufacturer, but reversing on the grounds that a trial court cannot weigh evidence and determine issues of fact when ruling on a motion for summary judgment). The trial court therefore erred in determining that the estate's claim was barred as a

matter of law based upon its determination that Mr. Blakely's work around the brake linings occurred during the manufacturing process.

{¶26} The estate's third assignment of error is sustained.

ASSIGNMENT OF ERROR FOUR

> THE TRIAL COURT ERRED WHEN IT GRANTED SUMMARY JUDGMENT ON SUPPLIER LIABILITY BASED ON *DICENZO V. A BEST PRODUCTS* * * *.

{¶27} In its fourth assignment of error, the estate argues the trial court erred in relying upon *DiCenzo v. A-Best Prods. Co.*, 120 Ohio St.3d 149, 2008-Ohio-5327, in granting summary judgment on its claim for supplier liability. We agree.

{¶28} In *DiCenzo*, the Supreme Court of Ohio held that *Temple v. Wean United, Inc.*, which imposed strict liability on nonmanufacturing sellers of defective products, did not apply retroactively to products sold before *Temple* was announced in 1977. *DiCenzo* at ¶ 1. In its analysis in Mr. Blakely's previously filed case, the trial court found that the alleged incidents at issue occurred in 1967 and 1968, thereby predating *Temple v. Wean United*, and concluded that *DiCenzo* barred the estate's supplier liability claims as a matter of law. The trial court agreed with Goodyear that regardless of how the estate labeled the claim for supplier liability, be it as strict liability or as statutory supplier negligence, it was barred by *DiCenzo*. In granting summary judgment in the refiled case, the trial court concluded that the estate could not make a prima facie claim for "statutory negligent failure to warn" because Mr. Blakely was not in privity with Goodyear.

{¶29} In its brief to this Court, the estate reiterates that its "claim is for statutory negligence for failure to warn regarding the hazards of its asbestos containing products" that were supplied to Aerospace, stating:

> In her Complaint Plaintiff clearly stated her cause of action for supplier liability under her third cause of action which was titled "Product liability pursuant to ORC 2307.71-78." This pleading makes it abundantly clear that the claim alleged is statutory, not common law or strict liability. Specifically Plaintiff's supplier claim is being brought under the following statute: 2307.78 Liability of supplier.

{¶30} "A cause of action against a supplier is governed by R.C. 2307.78." *Brown v. McDonald's Corp*. 101 Ohio App.3d 294, 301 (9th Dist.1995). "Pursuant to that section, a plaintiff may establish a supplier's liability under three separate theories only. Subsection (A)(1) allows a negligence claim. Subsection (A)(2) allows for strict liability if the supplier made an express representation to which the product did not conform at the time the product left the supplier's control. Subsection (B) links the supplier's liability to that of the manufacturer * * *." *Id*. "[I]n order to establish actionable negligence, one must show the existence of a duty, a breach of that duty, and an injury resulting proximately therefrom." *Id*. at 302, quoting *Menifee v. Ohio Welding Prods., Inc*., 15 Ohio St.3d 75, 77 (1984). "In Ohio, the case law has established that a manufacturer or vendor is negligent when he has knowledge of a latent defect rendering a product unsafe and fails to provide a warning of such defect." *Temple* at 325, citing *Sams v. Englewood Ready-Mix Corp.*, 22 Ohio App.2d 168 (2d Dist.1969); *Burns v. Pennsylvania Rubber & Supply Co.*, 117 Ohio App. 12 (7th Dist.1961).

{¶31} "[W]hen the Ohio General Assembly enacted the current version of the [Ohio Products Liability Act, R.C. 2307.71 et seq.], it abrogated all common law claims relating to product liability causes of actions." *Parker v. ACE Hardware Corp.*, 2d Dist. Champaign No. 2017-CA-8, 2018-Ohio-320, ¶ 27, quoting *Evans v. Hanger Prosthetics & Orthotics, Inc.*, 735 F.Supp.2d 785, 795 (N.D.Ohio 2010). The Ohio Product Liability Act was enacted by 1987 H 1, effective January 5, 1988, and provides that the provisions "shall apply only to product liability actions that are commenced on and after the effective date of this act and that are based upon

claims for relief that arise on or after that date." With regard to asbestos exposure, the Supreme Court of Ohio has determined that "[w]hen an injury does not manifest itself immediately, the cause of action arises upon the date on which the plaintiff is informed by competent medical authority that he has been injured, or upon the date on which, by the exercise of reasonable diligence, he should have become aware that he had been injured, whichever date occurs first." *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 90 (1983).

{¶32} The estate stated that it was bringing its claim pursuant to R.C. 2307.78(A)(1), which provides:

> Subject to division (B) of this section, a supplier is subject to liability for compensatory damages based on a product liability claim only if the claimant establishes, by a preponderance of the evidence, that * * *:
>
> > (1) The supplier in question was negligent and that, negligence was a proximate cause of harm for which the claimant seeks to recover compensatory damages * * *.

Prior to *Temple*, the Supreme Court of Ohio had determined that in a products liability case there are three possible causes of action which the plaintiff may pursue: an action in tort grounded upon negligence, an action based upon contract, and an action in tort "based upon the breach of a duty assumed by the manufacturer-seller of a product based upon the implicit representation of good and merchantable quality and fitness for intended use when he sells the product [i.e., the breach of an implied warranty]." *Lonzrick v. Republic Steel Corp.*, 6 Ohio St.2d 227, 229-230 (1966). *See also Lawyers Cooperative Publishing Co. v. Muething*, 65 Ohio St.3d 273, 278-279 (1992); *Vidensek v. Ford Motor Co.*, 9th Dist. Medina No. 2120-M, 1992 WL 393171, *2 (Dec. 30, 1992). The *Lonzrick* Court noted that "[a]n action in tort which is grounded upon negligence * * * does not require the allegation of a contractual relationship between the plaintiff and the defendant." *Lonzrick* at 229. Conversely, the Court noted that "[a] cause of action which is

based upon contract * * * requires that there be a contractual relationship between the plaintiff and the defendant." *Id*. *Lonzrick* spends the rest of its analysis on breach of implied warranty claims, examining the history of warranty claims, which had previously required privity, before finally arriving at the determination that an action for implied warranty does not require a contractual relationship between the plaintiff and defendant. *Id.* at paragraph one of the syllabus.

{¶33} *Dicenzo* continues this analysis of breach of warranty claims, noting that "[h]istorically, a lack of privity between consumers and manufacturers prevented consumers from recovering damages for a defective product under a breach-of-warranty claim against the product's manufacturer." *DiCenzo* at ¶ 30. *DiCenzo* then traces breach of warranty claims and the relaxation of the privity requirement under claims against manufacturers. *DiCenzo* finally addresses the issue of strict liability against a non-manufacturing supplier in *Temple,* stating:

> *Temple* clearly defined a new rule that nonmanufacturing suppliers of products could be held liable for injuries caused by those products. Prior to *Temple*, no holding from this court had permitted the seller of a product who was not also the manufacturer to be liable for a defective product under a breach-of-warranty theory based in tort absent privity, and none foreshadowed that such a holding was on the horizon. Clearly, *Temple* addressed an issue of first impression that had not been foreshadowed in prior cases.

Dicenzo at ¶ 42. It further discusses the purpose of the strict liability doctrine to induce manufacturers and suppliers to reduce the risk of injury, concluding that it would be inequitable to impose such liability on nonmanufacturing suppliers of asbestos products. *Id.* at ¶ 44-47.

{¶34} The first words of *Dicenzo* read as follows:

> In this case, we must determine whether our decision in *Temple v. Wean United, Inc.*[, 50 Ohio St.2d 317 (1977)], which imposed strict liability on nonmanufacturing sellers of defective products, applies retroactively to products sold before *Temple* was announced in 1977.

Id. at ¶ 1.

{¶35} In the case before us for review, the estate's claim is based upon negligence under R.C. 2307.78(A)(1), and is not based upon the separate theory of strict liability as provided under R.C. 2307.78(A)(2). *DiCenzo* also states that "[p]rior to *Temple*, no holding from this court had permitted the seller of a product who was not also the manufacturer to be liable for a defective product under a breach-of-warranty theory based in tort absent privity * * *." *DiCenzo* at ¶ 42. It makes no such determination, however, for a claim sounding in negligence, and neither the parties nor the trial court have provided authority for the proposition that privity between parties is required for an action based in negligence, as opposed to one based upon breach of warranty. As observed in *Lonzrick*, a negligence claim is distinct from a claim for breach of implied warranty. *Lonzrick* at 229-230. Although an analysis of duty will take into consideration the relationship between the parties, there is no explicit requirement for privity.

{¶36} We therefore conclude the trial court erred in finding that *DiCenz*o acts as a bar to the estate's claim, which was brought under R.C. 2307.78. We note that we make no further conclusions as to the application of statutory liability or the success of such a claim, as our review is limited to the issue raised by the assignment of error.

{¶37} The estate's fourth assignment of error is sustained.

III.

{¶38} The estate's first assignment of error is overruled. The estate's second, third, and fourth assignments of error are sustained. The judgment of the Summit County Court of Common Pleas is reversed and remanded for further proceedings consistent with this decision.

Judgment reversed
and remanded.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellee.

THOMAS A. TEODOSIO
FOR THE COURT

HENSAL, J.
CALLAHAN, J.
CONCUR.

APPEARANCES:

JESSICA M. BACON, Attorney at Law, for Appellant.

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