ROETZEL & ANDRESS: 2020 APPELLATE YEAR IN REVIEW

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The Appellate Law Practice Group of Roetzel & Andress represented clients in a wide variety of cases in both state and federal courts, appealing adverse trial court rulings and successfully defending lower court victories on appeal. The Appellate Law Group consists of attorneys with knowledge and experience in understanding the intricacies of the appellate process and navigating a case successfully through the appellate courts. The cases below provide a sampling of some of Roetzel's work and highlight the professional excellence and top-notch skills consistently displayed by the appellate team.

Appellate Procedure: Improper Party on Appeal
Knapp v. Speedway LLC, No. 2D19-3460, 2020 WL 7312089, at *1 (Fla. 2d DCA Dec. 11, 2020)
In a case of mistaken identity, our client was improperly included in an appeal involving a defendant with a similar name. Plaintiff had apparently been injured at a Speedway gas station in Kentucky. Initially, she sued a Florida limited liability company named Speedway, but served the lawsuit on Roetzel's client, which is a Delaware limited liability company named Speedway. But our client did not have connection to Florida at the time or to the Florida LLC named Speedway, which was a completely different company. Thus, years ago, our client had been dismissed from the action, which had been affirmed on appeal. Still, when plaintiff sought a judgment against the Florida LLC, she asked the court to use our client's name and address as the judgment debtor as if our client and the Florida LLC company were one and the same. When the court refused, plaintiff appealed and included our client and the Florida LLC in the appeal. Roetzel successfully had our client dismissed early in the appeal—avoiding the client the cost of briefing the appeal—by arguing that the client was not a proper party and that neither the trial court nor the appellate court had jurisdiction over our client.

Business Litigation: Breach of Oral Agreement
Malkani v. Hannah, No. 2D20-129, 2020 WL 7663444, at *1 (Fla. 2d DCA Dec. 23, 2020)
This appeal involved two longtime business partners who orally agreed to become 50-50 members in a newly formed limited liability company for the purpose of purchasing a $7 million shopping center. After months of conversations, text messages, and considerable work by Roetzel's client, the LLC was formed and closed on the shopping center. Shortly thereafter, the defendant reneged on their deal, refused to recognize our client's membership interest, and claimed no agreement had ever been reached. The jury ultimately found that an oral contract had existed and been breached, and the court ordered issuance of our client's 50% membership interest. Defendant argued on appeal that the evidence was insufficient to support the verdict because there was no proof that the parties had agreed to all essential terms, such as the extensive provisions one typically finds in an LLC operating agreement. Roetzel was retained just for the appeal and argued that Florida law requires very little to form and operate LLCs, which can even be implied by conduct. The evidence at trial showed that the oral agreement's core terms were agreed to and quite clear: create an LLC to purchase property; each party pay 50% to close that purchase; and each receive 50% membership interest. Any other term was not essential because Florida's LLC statute contains default rules for any term not specifically addressed by the parties. Agreeing with Roetzel's argument, the appellate court affirmed the verdict and order compelling issuance of the client's membership interest. What's more, the client's investment has nearly doubled during this dispute since the LLC's only asset—the shopping center—is now worth approximately $11 million dollars.

Condominium Law: Challenging the Termination Plan
Cornerstone 417, LLC v. Cornerstone Condo. Ass'n, Inc., 300 So. 3d 1262 (Fla. 5th DCA 2020)
This appeal challenged a plan to terminate a condominium. Plaintiff sued for declaratory relief, unjust enrichment, and breach of fiduciary duty claiming that it was forced to surrender its unit for less than market value. The trial court dismissed for failing to exhaust the administrative remedies in section 718.117(16), which required owners contesting a termination plan to seek mandatory arbitration through a particular State agency. Plaintiff argued this was error on appeal because the agency lacked jurisdiction over the type of claims and remedies sought. The appellate court rejected both arguments and affirmed dismissal in a published opinion. The court agreed with Roetzel's argument that when determining whether the agency has jurisdiction over particular claims, courts must

look to the gravamen of the claim, rather than how plaintiff couches it. Plaintiffs' claims—however labeled—fell squarely within the agency's jurisdiction because Florida law gave it authority to resolve disputes about the fairness and reasonableness of a unit's value during the termination process. The court also agreed with Roetzel that the agency had jurisdiction over the owner's requested remedies because the agency had authority to modify the termination plan to apportion the proceeds in a fair and reasonable manner by assigning more value to the owner's unit.

Constitutional Law: Administrative Tax Foreclosures
State ex rel. Feltner v. Cuyahoga Cty. Bd. of Revision, 160 Ohio St.3d 359, 2020-Ohio-3080, 157 N.E.3d 685 (Ohio Sup. Ct. May 28, 2020)
This case involved a writ of prohibition action filed with the Ohio Supreme Court that challenged the constitutionality of Ohio Revised Code 323.65 through Ohio Revised Code 323.79, which provides for the administrative tax foreclosure proceedings to expedite the foreclosure of abandoned, tax delinquent land. In the case, the relator argued that the adoption of an administrative tax foreclosure procedure violated separation of powers and due process, and that the Board of Revision did not have jurisdiction to hear tax foreclosure actions. Roetzel represented the Cuyahoga County Land Reutilization Corporation and participated in the oral argument on behalf of the Respondents. Upon review, the Ohio Supreme Court adopted Roetzel's position, finding that the Board of Revision did not clearly and unambiguously lack jurisdiction over the underlying tax foreclosure proceeding.

Constitutional Law: Municipal Taxation and Home Rule Authority
Athens v. McClain, 2020-Ohio-546 (Ohio Sup. Ct., Nov. 5, 2020)
This case involved a constitutional challenge by 161 municipalities to the constitutionality of a state law that provided for the centralized collection of municipal net income taxes by the Ohio Department of Taxation. Roetzel represented the City of Akron in the Supreme Court appeal, which challenged whether the state law violated the Home Rule Amendment of the Ohio Constitution, Article XVIII, Section 3, because it effectuated the takeover of the constitutional power of local self-government. Upon review, a majority of the Supreme Court held that the General Assembly had the authority to provide for the collection of municipal net profits taxes under Article XVIII, Section 13 of the Ohio Constitution, but that the law was unconstitutional to the extent that it provided for the retention by the State of 0.5% of the net profits taxes collected on behalf of each municipality.

Election Law: Municipal Charter Review Commission
State ex rel. Syx v. Stow City Council, 2020-Ohio-5144 (Ohio Sup. Ct. Sept. 11, 2020)
This case involves a writ of mandamus action filed with the Ohio Supreme Court to compel the Stow City Council to submit five proposed charter amendments to the November 2020 general election ballot that were recommended by the Stow City Charter Commission. Roetzel represented the Stow City Council in the action and argued that the Council did not have a clear legal duty to submit the charter amendments to the ballot, but had the authority under Sections 8 and 9 of Article XVIII of the Ohio Constitution and Section 5.02 of the Stow City Charter to exercise its legislative authority over whether to accept or reject the Charter Review Commission's recommendations. Upon review, the Supreme Court unanimously agreed, and denied the petition for a writ of prohibition.

Family Law: Enforcing a Marital Settlement Agreement and Attorney-fee Denial
Christensen v. Christensen, 291 So. 3d 1016 (Fla. 2d DCA 2020)
This appeal concerned a marital settlement agreement's meaning. The trial court construed it as requiring a former husband to pay his former wife's bills—including her insurance premiums and veterinarian bills—until their marital home sold and she received her lump-sum alimony from his share of the sale proceeds. Even though their agreement said that former husband "shall be responsible to pay . . . all bills . . . .", he argued on appeal that "all" did not really mean "all" because another contract provision said that he only needed to "maintain" the former wife's insurance until final judgment. On the former wife's behalf, Roetzel argued that the dictionary definition of "all" was broad enough to include her insurance premiums and that simply because the former husband was relieved of "maintaining" her insurance did not mean he was relieved "paying" bills like monthly premiums until she received her lump-sum alimony. In other words, "paying" for insurance and "maintaining" it were not

synonymous. In a published opinion, the appellate court agreed with Roetzel's argument and agreed with our cross-appeal argument that former wife should have also received her attorney's fees as the prevailing party in an action to enforce the settlement agreement.

Guardianship: Who Can Petition for Court Approval of Settlements?
In re Guardianship of D'Orsi, 288 So. 3d 602 (Fla. 2d DCA 2020)
This case involved a mediated settlement between a Ward's court-appointed professional guardian and our client, who was the Ward's wife, over a dispute arising out of the couple's premarital agreement that entitled our client to certain monthly benefits. After the mediation, however, the Ward's children convinced the guardian to renege on the settlement and refuse to obtain court approval as she had agreed to do. As a result, our client petitioned for the approval and the guardian countered for repudiation. After the court approved the settlement, the Ward's children appealed, arguing that under Florida law, only a guardian has standing to petition for approval of a settlement agreement. The appellate court rejected this argument and affirmed based on our argument that the plain language of section 744.441, Florida Statutes and the probate rules do not restrict who may petition for approval of a court-ordered, mediated settlement.

Land Use & Zoning: Constitutionality of Local Setback Laws that Extend into Navigable Waters
Criswell v. City of Naples, No. 2D19-3314, 2020 WL 7681968, at *1 (Fla. 2d DCA Dec. 23, 2020)
This appeal concerned whether a municipality could regulate riparian side-yard setbacks. Plaintiff moored his 108-foot yacht to the dock behind his house, but the yacht's size encroached on his property's setbacks. When a neighbor complained that the yacht was blocking his view of the water, the city cited plaintiff for the code-enforcement violation. Plaintiff then challenged the setback law's constitutionality insofar as it extended into the waterway, which the trial court rejected on summary judgment. Plaintiff sought reversal on appeal, claiming the setback law conflicted with the Public Trust Doctrine in the Florida Constitution and with the State's regulation of anchoring in section 327.60, Florida Statutes. Defending the city's law, Roetzel argued that its law did not conflict with the Public Trust Doctrine, which governed only who had title to the State's waterways and not who had regulatory authority over them. And since municipalities have home-rule power to concurrently regulate on all issues that the State can regulate, the setback law was valid. Roetzel further argued that section 327.60 did not preempt the setback law because—at best—the statute regulated only the anchoring of vessels, which is not synonymous with the mooring of vessels to a dock. And since the statute did not address mooring, the city's law prohibiting a moored vessel from encroaching into a property's setback was not preempted. The appellate court agreed with both arguments and affirmed the setback law's validity in an unpublished opinion.

Land Use and Zoning Law: Non-Conforming Uses
City of Marietta v. Board of Trustees for Washington County Woman's Home, 4th Dist. Washington No. 19cv23, 2020-Ohio-5144 (Ohio App. 4th Dist. Oct. 26, 2020)
This case involved a zoning dispute relating to use of a former women's residential home by Oriana House for a residential treatment facility. In the trial court proceedings, Roetzel represented Oriana House and argued that the use was a lawful non-conforming use that did not expire upon a change in ownership. After the trial court granted a permanent injunction in favor of the City of Marietta, Roetzel filed an appeal to the Fourth District Court of Appeals, which reversed the judgment and remanded for a trial. The court found that the City of Marietta did not establish that the proposed nonconforming use of the property would be a change from the existing nonconforming use of the property to require the planning commission to approve a special use permit. It further instructed the trial court, upon remand, to determine whether Oriana House's use was a continuation of nonconforming use based upon whether there was a substantial change to the fundamental nature of the activities conducted on the property, and whether the proposed use had any greater impact on surrounding area.

Medical Malpractice: Peer Review Privilege
Squiric v. Surgical Center at Southwoods, 7th Dist. Mahoning No. 20-MA-15, 2020-Ohio-7026 (Ohio Sup. Ct. Dec. 28, 2020)
This case involved a discovery dispute in a medical malpractice action in which the trial court wrongfully compelled our client, a surgical center, to produce utilization and case-by-surgeon reports, that had been generated for use by a peer review committee for credentialing and quality assurance purposes. Roetzel filed an

interlocutory appeal from this order on the basis that the records were protected by the peer review privilege and were not subject to discovery. On appeal, the Seventh District Court of Appeals agreed that the documents were protected and reversed the trial court's order.

Medical Malpractice: Trials - Jury Deliberations – Evid. R. 606(B)
Jones v. Cleveland Clinic Found., 202o-Ohio-3780 (Ohio Sup. Ct. July 23, 2020)
This case involved a medical malpractice trial that resulted in a 6-2 jury verdict in favor of the Defendants. On appeal, the Eighth District Court of Appeals vacated the jury verdict because the jury was originally deadlocked 4-4, but then decided to return a verdict in Defendants' favor late on Friday evening after being instructed to return on Monday morning for further deliberations. Roetzel then filed an appeal to the Ohio Supreme Court, which voted 7-0 to reverse the Eighth District's decision. The Supreme Court held that the courts may not vacate a jury verdict merely because the jury was instructed to return for further deliberations on the following Monday morning. Moreover, it held that a juror letter that was submitted after the trial had ended expressing regret for changing her vote was inadmissible under Evid. R. 606(B).

Oil and Gas: Dormant Mineral Act
Hartline v. Atkinson, 7th Dist. Monroe No. 20 MO 0004, 2020-Ohio-2605 (Ohio App. 7th Dist., Dec. 8, 2020)
This case involved a surface owner's service of notice of their intent to abandon mineral rights by certified mail pursuant to the Dormant Mineral Act, R.C. 5301.56 (DMA). Plaintiffs/surface owners attempted to serve notice to the mineral rights holders as part of the Complaint, essentially stuck in the middle of the document, between the body of the Complaint and the exhibits to the Complaint. Roetzel represented the mineral rights holders and argued that service of the notice of abandonment as part of the Complaint does not comply with the requirements of the DMA. The trial court held service in this manner was proper and ruled in favor of the Plaintiffs/surface owners. Upon review, the Seventh District Court of Appeals reversed and found service was improper and that the minerals remained vested in the mineral rights holders under the DMA.

Oil and Gas: Stranger Rule and Collateral Attack Doctrine
Smith v. Collectors Triangle, Ltd., 7th Dist. Harrison No. 19 HA 0010, 2020-Ohio-4823 (Ohio App. 7th Dist., Sept. 28, 2020)
This case involved a collateral attack on a prior judgment reserving Lease royalties to an alleged "stranger" to title. A family jointly owned a piece of property in Harrison County, Ohio, and orally agreed amongst themselves that their elderly parents (the Worrells) would receive the royalties payable under a certain oil and gas lease encumbering the property. In 1997, several of the family members filed an action to partition the property. The property was eventually sold in a Sheriff's Deed to Collectors Triangle, Ltd., and the Deed included a reservation of lease royalties to the Worrells. Ascent Resources drilled several horizontal wells on the property but refused to pay the lease royalties to the Worrells' children (after the Worrells had passed away). Roetzel represented the family who filed a complaint alleging they were the owners of the lease royalties pursuant to the prior oral agreement and reservation in the Sheriff's Deed in the partition action. Defendants argued the reservation of lease royalties in the Sheriff's Deed was void under the stranger rule. Defendants filed a motion to dismiss the complaint on these grounds, which was granted by the trial court. On appeal, the family argued that the Sheriff's Deed (and reservation of lease royalties) was part of the trial court's judgment in the partition action, which could not be collaterally attacked in this subsequent action. The Seventh District Court of Appeals agreed, and held that, accepting the allegations in the Complaint as true, the reservation of lease royalties was part of the partition court's order which could not be collaterally attacked by the defendants in this later action.

Personal Jurisdiction and Preservation of Error
Rogoff v. Johnson, 294 So. 3d 284 (Fla. 2d DCA 2020)
In this case, a pro se Nevada resident sued our client in Florida, claiming that he had stolen and fenced valuable artwork from her Nevada home. The trial court granted our client's motion to dismiss because he was a Connecticut resident, had never been a Florida resident, did not own or operate a business here, did not own property here, and only vacationed in Florida with his spouse on occasion. On appeal, the plaintiff argued that Florida had jurisdiction because our client's spouse owned vacation property in Florida that our client visited. Roetzel advocated for affirmance by first arguing that the plaintiff's contention was unpreserved because she had

not provided a transcript of the dismissal hearing. We also argued that merely visiting property in Florida that one's spouse wholly owns is insufficient, as a matter of law, to constitute "minimum contacts" for purposes of securing personal jurisdiction under the Constitution's Due Process Clause. The appellate court agreed and affirmed in an unpublished decision.

If you have any questions, please contact any of the listed Roetzel attorneys.

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