IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Lakeisha Brandon, as independent administrator of the estate of Aaron Brandon, deceased; Lakeisha Brandon, individually; and Dakuarie Brandon,	)	
Plaintiffs,	)	
v.	)	No. 18 L 9247
City of Chicago, John Bransfield, as special administrator of the estate of Officer Brandon Kreuger, a former employee of City of Chicago; Village of Hazel Crest, Detective Farkas, individually and as an employee of the Village of Hazel Crest; Officer K. Meletis, individually and as an employee of the Village of Hazel Crest, Former Sergeant David Nelson, individually and as an employee of the Village of Hazel Crest,	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This matter comes on the motion of John Bransfield asking this court to certify a question pursuant to Illinois Supreme Court Rule 308. The request is based on this court's previous orders dated February 24, 2021, June 9, 2021, and November 18, 2021. To avoid unnecessary repetition of the facts and law, this court incorporates those three orders into this one.

Rule 308 explicitly provides, in relevant part, that:

> When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. Such a statement may be made at the time of the entry of the order or thereafter on the court's own motion or on motion of any party. The Appellate Court may thereupon in its discretion allow an appeal from the order.

Ill. S. Ct. R. 308. Based on this court's three prior orders, Bransfield requests certification of the following question:

> Can an amended complaint relate back to the date of the filing of the original pleading pursuant to section 2-616(d) when the original complaint was void *ab initio*—a nullity that did not invoke the jurisdiction of the circuit court?

As an initial matter, Bransfield's proposed question makes two fundamental errors. First, this court did not find that Brandon's complaint was void *ab initio*—just the opposite. This court found that the Code of Civil Procedure expressly permits a party to seek and obtain letters of office at any time before or after the filing of a complaint and that the receipt of those letters of office relates back to the date of the original filing. *See* 735 ILCS 13-209(b)(2). Second, it follows that Bransfield errs by arguing this court lacked jurisdiction. Given that section 13-209(b)(2) permits an otherwise late filing, this court had jurisdiction over the case.

Bransfield correctly points out that the First District has held that an amended complaint substituting an administrator as the party-plaintiff relates back if the parties had notice of the cause of action before the statute of limitation expires. *Marcus v. Art Nissen & Son, Inc.*, 224 Ill. App. 3d 464 (1st Dist. 1991); *see also Jansen v. Ameritel, Inc.*, 266 Ill. App. 3d 734, 739 (1st Dist. 1994). Bransfield also notes that that the Fifth District Appellate Court in *Bricker v. Borah*, 127 Ill. App. 3d 722 (5th Dist. 1984), and the Third District Appellate Court in *Vaughn v. Speaker*, 156 Ill. App. 3d 962 (3rd Dist. 1987), reached the opposite conclusion. This court disagrees with Bransfield's interpretation of *Vaughn*, but, as explained below, it does not matter.

Bransfield's proposed question ultimately fails the first Rule 308 requirement because this court's earlier decisions were not dictated by its position on any area in which there was a substantial ground for difference of opinion. Rather, this court's earlier decisions were dictated by *stare decisis*. Plainly, "the opinion of one district, division, or panel of the appellate court is not binding on other districts, divisions, or panels." *O'Casek v. Children's Home & Aid Soc'y of Ill.*, 229 Ill. 2d 421, 440 (2008) (citing cases). Rather, *stare decisis* requires courts to follow decisions of higher courts, but not equal or lower ones. *Gillen v. State Farm Mut. Auto. Ins. Co.*, 215 Ill. 2d 381, 392 n.2 (2005) (quoting *Schiffner v. Motorola, Inc.*, 297 Ill. App. 3d 1099, 1102 (1998)). If a conflict arises between two appellate court districts, a circuit court is bound by *stare decisis* to follow the rulings of the district in which the circuit court sits. *Aleckson v. Village of Round Lake Park*, 176 Ill. 2d 82, 92 (1997); *State Farm Fire & Cas. Co. v. Yapejian*, 152 Ill. 2d 533, 539-40 (1992).

Thus, in this case, the law obligated this court to follow *Marcus* and its progeny.

A Rule 308 question might be appropriate for a circuit court located in the Second or Fourth Appellate Districts for which there is no guidance from those appellate courts. In the First District, however, this court correctly followed *stare decisis* and applied the law that even Bransfield implicitly admits is the controlling law in this appellate district.

For the reasons presented above, it is ordered that:

The defendant's motion to certify a question pursuant to Illinois Supreme Court Rule 308 is denied.

John H. Ehrlich

John H. Ehrlich, Circuit Court Judge

Judge John H. Ehrlich

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