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Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs. 2021-Ohio-4096

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Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs. 2021-Ohio-4096

I. INTRODUCTION

Since the mid-1800s, the United States of America has fostered arguments regarding the pleading standards necessary to make a claim within its court system.[1] Most recently, these disagreements have focused upon the appropriate implementation of three revolutionary constitutional law decisions: *Conley v. Gibson, Bell Atlantic Corporation v. Twombly,* and *Ashcroft v. Iqbal.*[2] In turn, each of these United States Supreme Court cases have altered the way the U.S. looks upon and handles the standard of pleading required in a motion to dismiss, per the Federal Rules of Civil Procedure.[3] Though each of these cases elaborate upon Federal Rule of Civil Procedure 8(a)(2), which details the general requirements of a pleading to acquire relief, each case seems to apply a different standard than the last.[4] This creates a multitude of issues for lower courts attempting to apply the law of the aforementioned cases.[5] When it appears as though the Supreme Court has set forth multiple, contradictory processes which pleadings must meet, state courts are left puzzled and without the intended guidance in choosing which precedential standard to apply.[6]

The Ohio judiciary is no exception.[7] The state has elected to codify the requirement that a complaint must contain a "short and plain statement" showing need for relief, an elaboration on the *Conley* standard.[8] Though this Ohio rule provides direction for lower courts within the state, it neglects to acknowledge the standards set forth subsequent to *Conley* by the United

1. Brook Detterman, *Rumors of Conley's Demise Have Been Greatly Exaggerated: The Impact of Bell Atlantic Corporation v. Twombly on Pleading Standards in Environmental Litigation*, 40 ENVTL. L. 295, 300 (2010) [hereinafter, Detterman, *Rumors of Conley's Demise*].

2. Conley v. Gibson, 355 U.S.41, 45-46 (1957); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 563 (2007); Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009).

3. *Conley*, 355 U.S. at 45-46; *Twombly*, 550 U.S. at 563; *Iqbal*, 556 U.S. at 678-79.

4. FED. R. CIV. P. 8(a)(2) (2022); *Conley*, 355 U.S. at 45-46; *Twombly*, 550 U.S. at 563; *Iqbal*, 556 U.S. at 678-79.

5. Ryan Mize, *From Plausibility to Clarity: An Analysis of the Implications of Ashcroft v. Iqbal and Possible Remedies*, 58 U. KAN. L. REV. 1245, 1259 (2010) [hereinafter Mize, *From Plausibility to Clarity*].

6. *Id.*

7. OHIO CIV. R. 8(a) (2022).

8. *Id.*; *Conley*, 355 U.S. at 45-46.

States Supreme Court in *Twombly* and *Iqbal*.[9] Further, because Ohio's code is state-specific, it may exist in contradiction to other states' laws which, by mandate of the United States Supreme Court, it should not.[10] Instead of complying with one, unified standard set forth by the United States Supreme Court, both the judicial and legislative branches of the Ohio government have been forced to cherry-pick only one of the guiding principles from the aforementioned cases to govern.[11] It is undeniable that a solution to this issue must be reached to avoid nonuniform application of laws and inequitable treatment of American citizens.[12] However, despite the seemingly looming threat this suggestion presents, reaching that "solution" may be easier than it appears. Analyzed below are each of these cases, their relationships with one another, and their potential to be utilized appropriately and collectively within American courts.

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

G.B. was a two-year-old child who resided in a volatile household resultant of her parents' behavior, both of whom had a history of abusing their children.[13] While living with her parents, caseworkers were assigned to G.B. to investigate claims of neglect and conduct home visits.[14] During this time, G.B. was admitted to Cincinnati Children's Hospital Medical Center.[15] Her stay at the hospital revealed she was severely malnourished and had sustained numerous injuries.[16] Doctors from the medical center reported to G.B.'s caseworkers the possibility that she was suffering from abuse at her home.[17]

Three months later, the caseworkers allegedly conducted a home visit to G.B. in response to the previous hospital stay.[18] The caseworkers reported that G.B. was "healthy and happy" at the time of the visit.[19] However, only three weeks after the home visit occurred, G.B. was pronounced dead.[20] The coroner subsequently discovered over 100 injuries upon G.B.'s body at

9. OHIO CIV. R. 8(a) (2022); *Conley*, 355 U.S. at 45-46; *Twombly*, 550 U.S. at 563; *Iqbal*, 556 U.S. at 678-79.

10. Marbury v. Madison, 5 U.S. 137, 177 (1803).

11. OHIO CIV. R. 8(a) (2022); *Conley*, 355 U.S. at 45-46.

12. Mize, *From Plausibility to Clarity, supra* note 5, at 1260.

13. Maternal Grandmother v. Hamilton Cty. Dept. of Job & Family Servs., Slip Opinion No. 2021-Ohio-4096 at ¶ 14 (2021).

14. *Id.*

15. *Id.*

16. *Id.* at ¶ 33.

17. *Id.* at ¶ 14.

18. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 33.

19. *Id.*

20. *Id.*

the time of her death and noted she weighed only 13 pounds.[21] The cause of death was decided to be "Battered Child Syndrome with Acute Chronic Intercranial Hemorrhages and Starvation."[22]

Desena Bradley, the maternal grandmother to G.B., subsequently filed suit against the Hamilton County Department of Job and Family Services (henceforth referred to as "HCJFS") and each of G.B.'s caseworkers.[23] In the complaint, Bradley alleged caseworkers were wanton and reckless by unreasonably failing to adequately investigate the report the hospital gave them claiming G.B.'s likelihood of being abused.[24] Bradley asserted the "wanton and reckless" claim because such behavior was a legal exception to the immunity that would otherwise have been granted to the defendants as they were government employees.[25]

Each of the defendants named in the case at bar filed separate motions for judgement on the pleadings, arguing the lawsuit was invalid because of their status as government employees; they argued that, because of that status, they enjoyed immunity from cases such as Bradley's.[26] The trial court ruled in favor of the defendants, granting their motions.[27] Bradley appealed.[28]

The First District affirmed the lower court's ruling.[29] However, this pronouncement was not made without discourse. While the First District uniformly agreed that HCJFS was immune from the suit, not all members of the court felt the same rationale could be applied to the caseworker defendants.[30] However, the court ultimately decided Bradley's complaint lacked facts sufficient to support a conclusion of a wanton or reckless misconduct regarding their investigation of G.B.'s case.[31] Again, Bradley appealed the ruling.[32] The Supreme Court of Ohio accepted Bradley's appeal and reviewed it; that is the case at hand.[33]

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21. *Id.*
22. *Id.*
23. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 3.
24. *Id.* at ¶ 14.
25. *Id.* at ¶ 4.
26. *Id.* at ¶ 2.
27. *Id.* at ¶ 5.
28. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 5.
29. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 5.
30. *Id.*
31. *Id.* at ¶¶ 2-3.
32. *Id.* at ¶ 6.
33. *Id.*

III. COURT'S DECISION AND RATIONALE

A. Majority Opinion by Justice Fischer

Justice Fischer wrote the majority opinion, joined by Chief Justice O'Connor and Justices Donnelly, Stewart, and Brunner.[34] The Court commences its discussion by posing the first issue in the case at bar; it states, "[W]e are asked to decide whether claims invoking the exception under R.C. 2744.03(A)(6)(b) to the immunity afforded to employees of a political subdivision are subject to a heightened pleading standard."[35] In pursuit of an answer, the Court reviews the application of immunity of government employees under Ohio law.[36] Though such immunity is generally granted, where wanton and reckless conduct by government employees exists, the privilege dissipates.[37] The Court delves further into this exception to the immunity rule by revisiting a case it decided in 2012: *Anderson v. Massillon*. In *Anderson,* the court defined both "wanton" and "reckless."[38] "Wanton" delineated a failure of exercising care to an individual to whom a duty is owed when harm is highly probable.[39] "Reckless" described conduct that intentionally and unreasonably overlooked obvious risks of harm.[40]

As a result of these definitions, the Supreme Court of Ohio mandated that, for a government employee to act wantonly or recklessly, their conduct must be beyond that of ordinary negligence.[41] This elevated standard became the crux of this case. For the wanton or reckless exception to immunity to be applicable, behavior that is *more* than negligence must be proven.[42] The question now becomes whether there must also be a heightened pleading standard.

Generally, a pleading for relief in Ohio requires only a "short and plan statement of the claim," dictated by Civ.R. 8(A).[43] However, the Court currently recognizes some exceptions to this rule where the pleading standard is heightened, such as claims of fraud.[44] Thus, in the case at bar, the Court was faced with a decision of whether to treat claims of wanton

34. *Maternal Grandmother*, 2021-Ohio-4096 at ¶¶ 1, 18.
35. *Id.* at ¶ 1.
36. *Id.*
37. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 1; OHIO REV. CODE ANN. 2744.03(A)(6)(b) (2022).
38. Anderson v. Massillon, 983 N.E.2d 266, 270-72 (Ohio 2012).
39. *Id.*
40. *Id.*
41. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 8.
42. *Id.* at ¶ 9.
43. Fed. R. Civ. P. 8(a)(2) (2022).
44. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 10; OHIO CIV. R. 9(b) (2022).

and reckless conduct like fraud, applying a heightened standard, or to treat them like almost all other claims brought within the State. To make its decision, the Court referred to codified language in the Ohio State Rules of Civil Procedure.[45] Specifically, it looked to Rule 9(B) which states, "Malice, intent, knowledge, and other condition of mind of a person may be averred generally."[46] Deciding that both wanton and reckless conduct are covered by the umbrella of this definition, the Supreme Court of Ohio ruled that the pleading standard for wanton and reckless claims would be the general, notice-pleading described in Civ.R. 8(A).[47] No heightened pleading standard was deemed necessary.[48]

The Court then moves into its discussion to the second issue in the case at hand: whether the complaint made by Ms. Bradley against the caseworkers could survive the defendants' motions for a judgement on the pleadings.[49] Recall, Bradley's complaint alleges that G.B.'s caseworkers were wanton and reckless by unreasonably disregarding the risk of harm present to G.B., evidenced by their knowledge of her parents' history of abuse and the negative hospital reports provided to them regarding G.B. and potential parental neglect.[50] Upon review, the Court decided that Bradley's complaint easily met the requirements necessary for notice-pleading.[51] Because of the filed complaint and information provided therein, the Court stated that the caseworkers were put on adequate notice of the claims being brought upon them by Bradley and the potential exception to their immunity.[52] Thus, the Court held that a judgement on the pleadings was inappropriate and cannot be upheld.[53] The case was sent back to the lower court on remand.[54]

B. Concurring Opinion by Justice DeWine

Justice DeWine wrote the concurring opinion for the case at hand, joined only by Justice Kennedy. The contents of this concurrence focus heavily upon its disagreement with the majority's failure to impose an alternative pleading standard to notice-pleading.[55] The Court begins this discussion through means of *Conley v. Gibson,* a United States Supreme

45. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 10.
46. *Id.*; OHIO CIV. R. 9(b) (2022).
47. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 11; FED. R. CIV. P. 8(a)(2) (2022).
48. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 12.
49. *Id.*
50. *Id.* at ¶ 14.
51. *Id.* at ¶ 15.
52. *Id.*
53. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 5.
54. *Id.*
55. *Id.* at ¶¶ 21-27.

Court decision which set the standard for notice-pleadings.[56] *Conley* declares that, for a case to be dismissed at the pleading stage within a notice-pleading state, a party must prove it is "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[57] Otherwise, the case will not be dismissed at that time.[58] The concurring opinion argues that this standard is insufficient and, furthermore, has long been overruled.[59]

First, Justice DeWine debates the lack of inclusivity under the "no set of facts" standard, stating that practically any complaint is able to survive such a low threshold.[60] The concurrence urges that, because the barrier is so low, the standard is not useful and necessitates being heightened.[61] Next, Justice DeWine draws back to *Bell Atlantic Corp. v. Twombly,* a United States Supreme Court decision which postdated and overruled the pleading standard set forth by *Conley.*[62] *Twombly* implemented a new standard that must be met in order for a motion to avoid dismissal in the pleadings stage.[63] *Twombly*'s rule requires a plaintiff to instead allege "enough facts to state a claim to relief that is *plausible* on its face."[64] Later defined by the Court in *Ashcroft v. Iqbal, "*plausibility" under *Twombly* exists when there is "more than a sheer possibility that a defendant has acted unlawfully."[65] Justice DeWine argues that, not only does *Twombly* expressly nullify notice-pleading as the general standard by overruling *Conley,* but Ohio courts have affirmed such time and time again in their subsequent holdings.[66] Thus, through the concurrence, Justice DeWine adamantly suggests that the Ohio notice-pleading standard applied in the case at bar is improper and advocates instead for implantation of the *Twombly* standard generally.[67]

The concurrence concludes by applying the current notice-pleading standard to Bradley's complaint.[68] Taking into account the undernourishment, injuries, hospital visit, and final cause of death of G.B., Justice DeWine agreed with the majority that there are sufficient facts alleged within the complaint to state a claim for relief under the wanton and

56. *Conley,* 355 U.S. at 45-46.
57. *Conley,* 355 U.S. at 45-46
58. *Id.*
59. *Maternal Grandmother*, 2021-Ohio-4096 at ¶¶ 23, 25.
60. *Id.*
61. *Id.*
62. *Twombly,* 550 U.S. at 563.
63. *Id.* at 570.
64. *Id.*
65. *Iqbal*, 556 U.S. at 678-79.
66. *Maternal Grandmother*, 2021-Ohio-4096 at ¶ 29.
67. *Id.* at ¶¶ 25-17.
68. *Id* at ¶ 30.

reckless exception to immunity.[69] This is because, if the injuries and state of G.B. were as inexorable as the complaint alleges, one may reasonably assume a poor home-visit, or no home-visit, was paid to G.B. by the caseworkers.[70] Therefore, the claim may not be dismissed and a motion for judgement on the pleadings must be denied.[71]

IV. ANALYSIS

Perhaps the most intriguing portion of the opinion in the case at bar is that of Justice DeWine's concurrence. Brought into question is the appropriateness of the current notice-pleading standard, which Justice DeWine attempts to supplant with that of *Twombly.* By examining the majority's use of notice-pleading, and, therefore, *Conley,* subsequent questions come into view: Did *Twombly* simply modify *Conley* or did it overrule the latter to create a heightened pleading standard? If *Conley* was, in fact, overruled, what impact does that finding have on the legitimacy of the majority's holding in this case and other Ohio case law? These two questions will be discussed in turn.

A. What are the relationships between Twombly, Conley, and Iqbal?

Before much conversation can be had regarding the potential eradication of *Conley* by *Twombly,* both cases must be discussed minimally in order to analyze the cases's impacts. Taken chronologically, *Conley* will be dealt with first. Prior to *Conley,* courts and legislature both had been fervently working to depart from harsh common law pleading standards.[72] This effort eventually manifested into the codification of the Federal Rules of Civil Procedure.[73] However, implementation of these new rules did not come without backlash and confusion of applicability.[74] This is where *Conley* comes into play. *Conley* was decided in attempt to clarify operation of Federal Rule of Civil Procedure 8(a)(2) under a Rule 12(b)(6) motion to dismiss.[75] Recall, Federal Rule 8(a)(2) states a general rule for pleadings, notating that "a pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."[76] Taking this language, the United States Supreme Court simplifies

69. *Id.* at ¶ 34.
70. *Id.*
71. *Maternal Grandmother*, 2021-Ohio-4096 at ¶¶ 34-35.
72. Jason G. Gottesman, *Speculating as to the Plausible: Pleading Practice After Bell Atlantic Corp. v. Twombly*, 17 WIDENER L.J. 973, 977-83 (2008) [hereinafter Gottesman, *Speculating as to the Plausible*].
73. *Id.* at 979.
74. *Id.* at 979-87.
75. *Id.* at 985-86.
76. FED. R. CIV. P. 8(a)(2) (2022).

its interpretation through *Conley* by issuing the notice-pleading standard, an elaboration on Rule 8(a)(2).[77] This standard states, "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."[78] This "rule" was subsequently applied to all like cases, without fail, until 2007 when the United States Supreme Court was faced with the *Twombly* decision.[79]

When *Twombly* entered the scene, there had already been numerous years of fighting for a heightened pleading standard for many specific claims.[80] In fact, other Rule 8 claims, such as fraud or mistake, came to adopt such harsher pleading requirements.[81] Thus, when the United States Supreme Court was faced with *Twombly,* it was no stranger to the idea of imposing a greater threshold for pleadings.[82] Furthermore, *Twombly* dealt with antitrust litigation, which was one of the primary claims a heightened pleading standard was sought for.[83] The *Twombly* Court did not hold back in eliciting disdain for the "no set of facts" standard in *Conley.*[84] It stated that the *Conley* language should be "forgotten" because it was "an incomplete, negative gloss on [the] accepted pleading standard" of Rule 8(a)(2).[85] Instead, the Court suggested that, rather than upholding *Conley's* view which allows any theory of a claim to survive unless facially impossible, the Court will now require "enough facts to state a claim to relief that is plausible on its face."[86] However, this concept of "plausibility" remained somewhat unclear until the United States Supreme Court decision of *Ashcroft v. Iqbal.*

Iqbal not only brought clarity to the vague idea of "facial plausibility" but also discerned which claims were to abide by the *Twombly* standard.[87] In *Iqbal,* the Supreme Court states that, for use under the *Twombly* standard, "a claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[88] There must be facts alleged which allow the court to infer, using its common sense, that there was *more* than simply a

77. Mize, *From Plausibility to Clarity, supra* note 5, at 1245-46.
78. *Conley*, 355 U.S. at 45-46.
79. Mize, *From Plausibility to Clarity, supra* note 5, at 1250.
80. *Id.*
81. *Id.* at 1251.
82. *Id.*
83. *Id.* at 1250-52.
84. *Twombly*, 550 U.S. at 546.
85. *Twombly*, 550 U.S. at 546.
86. *Id.* at 561, 570.
87. *Iqbal*, 556 U.S. at 678-84.
88. *Id.* at 678.

possibility the defendant was unlawful.[89] The Court then directly states that this standard, derived from *Twombly* and *Iqbal,* applies not only to antitrust claims but to all civil actions.[90]

B. Did Twombly overrule Conley to create a heightened pleading standard?

Now that there is basic understanding of the intertwined past of *Conley, Twombly,* and *Iqbal*, we must determine what their current relationship and effect is. These topics, however, are the focus of much ongoing debate amongst the legal community. While many scholars believe *Twombly* overruled *Conley* entirely, others hold belief that the three cases work harmoniously together to shed light on Rule 8(a)(2).

Scholars of the belief that *Twombly* has eradicated *Conley* hinge their opinion on the idea that *Twombly* created a *new* heightened pleading standard.[91] This view primarily comes from the changes that commenced after both the *Twombly* and *Iqbal* decisions. The first of these "changes" is that of the role of the judge.[92] It is argued that, by *Iqbal* requiring the judge to use common sense in making inferences about facial plausibility, the judge must now act as a "skeptical judicial gatekeeper."[93] The argument continues that giving the judge this role grants him too much power, allowing the judge to strike down any civil action that seems unlikely to him rather than basing the merits of the case on testimony or evidence.[94] While scholars are correct that the judge is being asked to make inferential decisions based on his own thought processes, this ask is not disparate to that of any other claim brought before him. Judges are impartial parties who are called to use their "common sense" and legal knowledge to make judgements on a daily basis; what they are asked to do under *Twombly* and *Iqbal* is no different. Further, the judge's ability to dismiss the claim on these grounds is the exception, not the rule; claims proceed *unless* they are facially implausible, a standard which, for any meritorious claim, should not be hard to reach.

The second change looked upon by those who believe *Conley* has been overruled is that, as a result of the "heightened standard," a complainant is forced to state sufficient facts to satisfy the *Twombly* standard without first

89. *Id.* at 664, 678.
90. *Id.* at 684.
91. Michael Eaton, *The Key to the Courthouse Door: The Effect of Ashcroft v. Iqbal and the Heightened Pleading Standard*, 51 SANTA CLARA L. REV. 299, 314 (2011) [hereinafter Eaton, *The Key to the Courthouse Door*].
92. *Id.* at 315.
93. *Id.*
94. *Id.*

being allowed discovery.[95] However, this is not an unordinary burden for parties responding to pretrial motions nor is it unique to a *Twombly* motions to dismiss. All pretrial motions suffer from this same complex. Further, even if the burden was unique to *Twombly* cases, it is not a hard one to meet. All a plaintiff must do to not get their claim dismissed is state a fact that shows there is something *more* than just a possibility the defendant was unlawful.[96] It is "possible" any person walking the planet has acted contrary to the law; this is an especially broad test. The only action a plaintiff must take in response is point to any factual basis that has caused them to believe the defendant actually did something unlawful. This standard does not ask anything extraordinary of the plaintiff; rather, it assures there is a meritorious basis for a claim to be brought and avoids frivolous actions.

Contrary to the aforementioned arguments are those of scholars who believe *Conley* was not overruled and that it, instead, acts in compliance with *Twombly* and *Iqbal.* This viewpoint derives from the language of *Twombly* and its functionality in practice. First and foremost, proponents of this view are quick to point out that the Court in *Twombly* expressly denies that it created a heightened pleading standard therein.[97] Secondly, it is argued that *Twombly* was a clarification of *Conley* rather than a rewrite.[98] This argument's validity has been exemplified on numerous occasions. One of such was in the United States Supreme Court per curium opinion of *Erickson v. Pardus*.[99] In *Erikson*, the Court is direct in stating that *Twombly* upholds *Conley's* requirements, except that specific facts are no longer necessary; the only statements required are a claim made and the grounds to assert it.[100] Both *Conley* and *Twombly* are generous in their parameters, and have been found by the Supreme Court to coexist successfully.[101] This is not complicated by *Iqbal*.[102] Though *Iqbal* elaborates upon *Twombly*'s language, neither the meaning of *Conley* nor *Twombly* have been implicated by such; rather, *Iqbal* stands to flesh out the information already provided by both of the previous decisions.[103] Further, recall the purpose for which *Twombly* was decided: to *clarify Conley*.[104] Neither *Twombly* nor *Iqbal* exceeded this purpose; rather, the Court accomplished what it set out to do.

95. Eaton, *The Key to the Courthouse Door, supra* note 91, at 314-15.
96. *Iqbal*, 556 U.S. at 678.
97. *Twombly*, 550 U.S. at 570.
98. Detterman, *Rumors of Conley's Demise, supra* note 1, at 320.
99. *Id.* at 321.
100. *Id.*
101. *Id.*
102. *Id.* at 322-23.
103. Detterman, *Rumors of Conley's Demise, supra* note 1, at 322-23.
104. Mize, *From Plausibility to Clarity, supra* note 5, at 1250.

Lastly, the majority of claims made under *Conley* that occurred before *Twombly* remain "good law," pointing to the conclusion that *Conley* was not eradicated by *Twombly.*[105]

It is clear these opposing standpoints view the resultant law from *Conley, Twombly,* and *Iqbal* in drastically different lights. The difference is this: arguments posed by those supporting an idea of an overruled *Conley* gathered their viewpoints from hypothetical "issues" that did not exist. In contrast, those who believe the three cases to work symbiotically base their findings on the precise language of numerous texts written by the United States Supreme Court which speak directly to the issue. Additionally, this second opinion finds itself meritorious given the purpose for which *Twombly* was initially brought before the Court. Thus, because the latter argument has concrete measures of intention and effect, unlike that of the former, it is likely that the second viewpoint is correct and that the pleading standard has not been heightened through implication of *Twombly* and *Iqbal.*

C. How does the lack of a new standard impact the case at bar?

In the case at bar, the Supreme Court of Ohio used the Conley standard alone to formulate their decision regarding the merits of the case. Like Justice DeWine, I agree the correct result was reached by the majority; however, the methodology in which it came about was amiss. As analyzed above, neither *Twombly* nor *Iqbal* created a heightened pleading standard to that of *Conley*. Rather, the three cases work as one to interpret and appropriately implement Rule 8(a)(2). By the Supreme Court of Ohio utilizing only the *Conley* requirements that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff [cannot] prove . . . [a] claim which would entitle him to relief," it failed to adequately analyze how such "proof" must be made.[106] This proof does not come from the "no set of facts" rule Conley suggests, but rather from stating "enough facts to state a claim to relief that is plausible on its face."[107] This is the manner in which this trio of cases must be applied: a comprehensive unit, not enemies at battle.

However, if the Court had appropriately applied all three cases to the instant case, it would have reached the same result and denied the motion to dismiss. This is because the facts alleged by Bradley in her complaint regarding the caseworker's behavior and the pathetic state of G.B. before and at the time of her death reveal an inference can be made, using common

105. Eaton, *The Key to the Courthouse Door, supra* note 91, at 317.
106. *Conley*, 355 U.S. at 45-46.
107. *Id.*; *Twombly*, 550 U.S. at 561, 570.

sense, to determine it was *more* than just possible the caseworkers acted wantonly and recklessly regarding G.B.'s case. Thus, because applying the appropriate standard reaches the same result as the majority opinion, I respectfully concur with the majority in judgement only.

However, the Supreme Court of Ohio's flawed reasoning in reaching that judgement manifests the potential for future cases to be decided incorrectly. If only the *Conley* standard is applied, the Court not only neglects the precents of both *Twombly* and *Iqbal* but will also incorrectly use the "no set of facts" rule present in *Conley* that was removed by *Twombly.* Therefore, despite the appropriate outcome being met in the instant case, the Court's failure to appropriately apply the law in this case may have mass, negative impacts on future Ohio caselaw. Erratic implementation of state laws has long been taboo, as mandated by the persuasive doctrine of stare decisis, Ohio's own constitutional provision, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[108] Regarding the particular rule in question, a great need for its systematic enforcement has also been proven by the United States Supreme Court clarifying its intended application of the rule on three separate occasions.[109] It is clear, given the aforementioned legal principles and precedent, that nonuniform application of this law would divest Ohio citizens seeking a claim under Rule 8(a)(2) of the equality and due process rights they are owed.[110] Because the *Conley* standard, used in the case herein, is inartful in its representation of the intention for the rule's operation, possibilities of its misuse and nonuniform application are endless. A state Supreme Court seated with justices who disagree on the correct implementation and relationship between *Conley, Twombly,* and *Iqbal* will undoubtedly deliver contradictory applications of the law, especially as new justices step into the Court. Viewed in tension with one another, the three instrumental cases herein cannot lead to equal application of the law. However, if the suggested uniform approach is adopted, disproportionate treatment of Rule 8(a)(2) claims will disappear; thus, ratification of this view is vital for the Ohio court system to protect the equality and constitutional rights it owes its citizens.[111]

Lastly, it may be argued that neither *Conley, Twombly,* nor *Iqbal* are appropriately applied in the case at bar because they deal with a motion for summary judgement whereas the case at bar presents a 12(c) motion to dismiss. However, the Sixth Circuit has set precedent which allows *Conley,*

108. U.S. CONST. amend. XIV, § 1 (2022); OHIO CONST. art. II § 26 (2022); In re Tong Seng Vue, 364 B.R. 767, 771 (Bankr. D. Or. 2007).

109. *Conley*, 355 U.S. at 45-46; *Twombly*, 550 U.S. at 563; *Iqbal*, 556 U.S. at 678-79.

110. U.S. CONST. amend. XIV, § 1.

111. OHIO CONST. art. II § 26 (2022); U.S. CONST. amend. XIV, § 1 (2022).

Twombly, and *Iqbal* caselaw to be applied to 12(c) motions.[112] Therefore, the law is correctly applied in the case at hand.

V. CONCLUSION

Two primary questions were sought to be answered in the form of this case note: (1) Did *Twombly* and *Iqbal* overrule *Conley* by creating a heightened pleading standard, and (2) What is the impact of the answer of the first question on the case at bar? To address the answer to the first point, it was necessary to understand the past and current relationships of the trio of cases. Each of these precedents were produced as a means to clarify the one prior, not to displace it. Thus, in action, it only makes sense that the three cases be used harmoniously rather than to combat one another. Therefore, when a court approaches a Rule 8(a)(2) problem, they must begin with the *Conley* standard and work towards *Iqbal*. In unison, these cases set the rule as follows: a complaint may only be dismissed if it appears beyond doubt that a plaintiff is incapable of stating sufficient facts to claim relief; these facts must be facially plausible so that a judge, using their common sense, may reasonably draw an inference that the defendant was acting unlawfully.[113] This is the combined standard produced by the three cases.

The Supreme Court of Ohio failed to apply this standard in the case at bar. If it had, however, the judgment would come out all the same. This is because both the majority's use of *Conley* and the combined standard look to the facts alleged in Bradley's complaint. The malnourished state of G.B. in addition to both the hospital's and coroner's reports mentioned in the complaint are more than sufficient facts to allow a judge to reasonably draw the inference that the defendant caseworkers were acting wantonly and recklessly, and, therefore, unlawfully. Though the reasoning by which the judgment was reached by vastly differs between the majority and the combined standard, the facts of this case allow a similar judgment to be made in both circumstances. Thus, under the combined standard, the case would be remanded to the lower court for a decision consistent with this ruling.

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112. Lemasters v. The Celina Municipal Court, et al. (memo), 2015-Ohio-2102 (2015); Tucker v. Middleburg-Legacy Place, 539 F.3d 545, 549 (6th Cir. 2008).

113. *Conley*, 355 U.S. at 45-46; *Twombly*, 550 U.S. at 561, 570; *Iqbal*, 556 U.S. at 664, 678.