APPENDIX A

Appendix	Judgement Entry	Docket no.	Court •Pages 1-7
A	Decided & filed: March 5, 2021	20-3754	United States Court of Appeals for the Sixth Circuit Cincinnati, Ohio
Case Caption: Case No. 20-3754, Merrilee Stewart, et al v. IHT Insurance Agency Group, et al			
Description: Appeal from the United States District Court for the Southern District of Ohio at Columbus, No. 2:16-cv-00210, James L. Graham, District Judge.			
Status: Appeal was denied			

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

100 EAST FIFTH STREET, ROOM 540
POTTER STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

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Filed: March 05, 2021

Mr. Todd Austin Brenner
Law Office
555 Metro Place N.
Suite 225
Dublin, OH 43017

Mr. James R. Carnes
Mr. Matthew T. Kemp
Shumaker, Loop & Kendrick
1000 Jackson Street
Toledo, OH 43604-5573

Re: Case No. 20-3754, *Merrilee Stewart, et al v. IHT Insurance Agency Group, et al*
Originating Case No. : 2:16-cv-00210

Dear Counsel,

The court today announced its decision in the above-styled case.

Enclosed is a copy of the court's opinion together with the judgment which has been entered in conformity with Rule 36, Federal Rules of Appellate Procedure.

Yours very truly,

Deborah S. Hunt, Clerk

Cathryn Lovely
Deputy Clerk

cc: Mr. Richard W. Nagel

Enclosures

Mandate to issue.

RECOMMENDED FOR PUBLICATION
Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 21a0056p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

MERRILEE STEWART; CHARLES STEWART,
Plaintiffs-Appellants,

v.

IHT INSURANCE AGENCY GROUP, LLC WELFARE BENEFITS PLAN; IHT INSURANCE AGENCY GROUP, LLC; FRITZ GRIFFIOEN; GRIFFIOEN AGENCY, LLC; RRL HOLDING COMPANY OF OHIO, LLC,
Defendants-Appellees.

No. 20-3754

Appeal from the United States District Court
for the Southern District of Ohio at Columbus.
No. 2:16-cv-00210—James L. Graham, District Judge.

Decided and Filed: March 5, 2021

Before: GIBBONS, WHITE, and THAPAR, Circuit Judges.

COUNSEL

ON BRIEF: Todd A. Brenner, BRENNER HUBBLE, Dublin, Ohio, for Appellants. James R. Carnes, SHUMAKER, LOOP & KENDRICK, LLP, Toledo, Ohio, for Appellees.

OPINION

THAPAR, Circuit Judge. When a district court provides two alternative grounds for its decision, the losing party must challenge each ground on appeal to change the outcome. The Stewarts did not follow this cardinal rule, so we must affirm.

* * *

Merrilee Stewart suffered a fall from grace. She once was a co-owner of RRL Holding Company of Ohio and served as president of IHT Insurance Agency Group (a subsidiary of RRL). Things went downhill fast after Stewart formed a potential competitor to IHT. First, she was removed from the presidency. Then, she launched a smear campaign against her replacement. Finally, the other members of RRL voted to buy out her ownership interest and remove her from the company entirely.

Stewart refused to sell her membership units, so RRL sued. Stewart counterclaimed. As part of the buyout, RRL had cut off Stewart's health- and life-insurance benefits. Stewart alleged that she remained an active member of RRL and was entitled to those benefits. The state court sent the parties to arbitration. The arbitration panel sided with RRL on all issues and ordered Stewart to sell her membership units. The panel also ordered Stewart to release all claims against RRL and its affiliates "from the beginning of the world" to that day. The state court affirmed.

But that was not the end of the story. While arbitration proceedings were ongoing, Stewart and her son filed this lawsuit against the defendants. They claimed, among other things, that IHT violated the Employee Retirement Income Security Act when it revoked Stewart's benefits. *See* 29 U.S.C. §§ 1161–1163. The district court dismissed the complaint with prejudice on two alternative grounds: (1) Stewart had released all her claims against the defendants, and (2) res judicata barred her from relitigating her removal from RRL and discontinued benefits.

On appeal, the Stewarts challenge only whether Stewart released all of her claims.[*] Indeed, their only reference to res judicata is a suggestion in their reply brief that the claims in

[*]The Stewarts also argue that any dismissal should have been without prejudice, leaving them free to amend their complaint. We review the decision to dismiss with prejudice for an abuse of discretion. *Ernst v. Rising*, 427 F.3d 351, 366 (6th Cir. 2005) (en banc). Dismissal with prejudice and without leave to amend is only appropriate when it is clear on de novo review that the complaint could not be saved by an amendment. *Newberry v. Silverman*, 789 F.3d 636, 646 (6th Cir. 2015). The Stewarts put forth three new claims (supported by two new facts) in a proposed amended complaint but have not explained why these claims would have survived the district court's ruling. Nor have they pointed to any other evidence that their complaint is "capable of being cured by amendment." *Id.* at 645. The Stewarts have now had ample opportunities to present their case; "we cannot say the district court

arbitration had "not been fully litigated" because some matters were not addressed. But even well-developed arguments raised for the first time in a reply brief come too late. *Island Creek Coal Co. v. Wilkerson*, 910 F.3d 254, 256 (6th Cir. 2018). So they have forfeited any right to challenge the res judicata ruling. That forfeiture dooms their appeal.

An appellant's goal is to undo the judgment below. It does no good for a track-and-field hurdler to clear just the first hurdle in a race and then sit down on the track. Similarly, the Stewarts cannot prevail by challenging only one of the bases for the district court's decision. Even if we agreed that Stewart's claims were not released, the district court's res judicata conclusion would still stand. *See Larry E. Parrish, P.C. v. Bennett*, --- F.3d ---, No. 20-5898, 2021 WL 788417, *4 (6th Cir. Mar. 2, 2021). As a result, so must the judgment.

We review judgments, not opinions. *Hardrick v. City of Detroit*, 876 F.3d 238, 244 (6th Cir. 2017). The Stewarts needed to win two arguments for us to reverse the district court's judgment. Since they raised only one, we affirm.

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abused its discretion in dismissing [their] claims with prejudice." *Craighead v. E.F. Hutton & Co.*, 899 F.2d 485, 496 (6th Cir. 1990).

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 20-3754

MERRILEE STEWART; CHARLES STEWART,

Plaintiffs - Appellants,

v.

IHT INSURANCE AGENCY GROUP, LLC WELFARE BENEFITS PLAN; IHT INSURANCE AGENCY GROUP, LLC; FRITZ GRIFFIOEN; GRIFFIOEN AGENCY, LLC; RRL HOLDING COMPANY OF OHIO, LLC,

Defendants - Appellees.

FILED
Mar 05, 2021
DEBORAH S. HUNT, Clerk

Before: GIBBONS, WHITE, and THAPAR, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Southern District of Ohio at Columbus.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX B

Appendix	Judgement Entry	Docket no.	Court •Pages 8-20
B	Decided & filed: June 15, 2020	2:16-cv-00210	United States Court of Appeals for the Sixth Circuit Cincinnati, Ohio
Case Caption: Merrilee Stewart, et al v. IHT Insurance Agency Group, et al			
Description: Opinion & Order, Case: 2:16-cv-00210-JLG-KAJ Doc #: 72 Filed: 06/15/20 Page: 1 of 12 PAGEID #: 1128			
Status: Case was dismissed with prejudice			

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MERRILEE STEWART, et al., Plaintiffs, **v.** **IHT INSURANCE AGENCY GROUP LLC WELFARE BENEFITS PLAN, et al.,** Defendants.	**Case No. 2:16-cv-210** **Judge Graham** **Magistrate Judge Jolson**

OPINION AND ORDER

In the case at bar, Plaintiffs Merrilee Stewart and Charles Stewart allege that Defendants[1] wrongfully terminated Ms. Stewart's membership interest in Defendant RRL Holding Company of Ohio, LLC ("RRL"),[2] in violation of an operating agreement (the "Buy/Sell Agreement"), and in doing so, intentionally interfered with the benefits afforded Plaintiffs through Ms. Stewart's membership in the IHT Insurance Agency Group, LLC Welfare Benefits Plan (the "Plan"), an employee welfare benefits plan established under the Employee Retirement Security Act of 1974 ("ERISA"). (Am. Compl. ¶¶ 30–33, 74, ECF No. 12 at 50, 55.) Plaintiffs further claim that Defendants IHT Insurance, RRL, and Fritz Griffieon breached their fiduciary duties to Plaintiffs

[1] The five Defendants in this case are: 1) IHT Insurance Agency Group, LLC Welfare Benefits Plan (the "Plan"), an employee welfare benefits plan established under ERISA. (Am Compl. at ¶¶ 2,5); 2) IHT Insurance Agency Group, LLC ("IHT Insurance"), the Plan sponsor and administrator. (*Id.* at ¶ 8); 3) RRL Holding Company of Ohio, LLC ("RRL"), the previous sole member of IHT Insurance. (*Id.* at ¶ 9); 4) Griffioen Agency, LLC, the alleged insurance "agent/broker" for the Plan. (*Id.* at ¶ 10); and 5) Fritz Griffioen, the alleged personal insurance agent for the Plan. (*Id.* at ¶ 12). The Court refers to these five collectively as "Defendants."

[2] Firefly Insurance Agency LLC ("Firefly") is an Ohio limited liability company formerly known as IHT Insurance Agency Group, LLC. Firefly/IHT Insurance was wholly owned by a second limited liability company, RRL Holding Company of Ohio, LLC, a member-managed LLC. On December 31, 2018, RRL merged with Firefly. (ECF No. 45-2.) Firefly is the surviving entity and RRL's successor-in-interest. (*Id.*)

as Plan participants and beneficiaries and did not evenly apply the terms of the Plan to similarly situated persons. (*Id.* at ¶¶ 61, 67, ECF No. 12 at 53–54.)

Before the Court is the issue of whether the underlying facts and issues concerning Plaintiffs' ERISA claims here were previously resolved at arbitration. For the reasons that follow, the Court finds that Plaintiffs' claims were resolved at arbitration, and their claims before this Court are therefore **DISMISSED.**

I. BACKGROUND

On March 2, 2015, Defendants RRL and IHT Insurance filed suit against Ms. Stewart in the Franklin County Court of Common Pleas. On May 8, 2015, Ms. Stewart filed a counterclaim seeking damages for the loss of her health and life insurance benefits. (Ex. B, ECF No. 68-2.) On November 10, 2015, the state court action was stayed, and the parties were ordered to arbitration to determine whether Ms. Stewart was properly removed as a member of Defendant RRL. The arbitration panel later granted Ms. Stewart's request to add Rodney Mayhill, William Griffieon, and Fritz Griffieon as parties to the arbitration and assert counterclaims.

On February 19, 2016, Ms. Stewart filed a complaint against the Plan and IHT Insurance in the Franklin County Court of Common Pleas, alleging wrongful termination of benefits under the Plan in violation of 29 U.S.C. § 1162. On March 8, 2016, the Plan and IHT Insurance filed their Notice of Removal to this Court. (ECF No. 1.) On May 27, 2016, Ms. Stewart filed her Amended Complaint, alleging, *inter alia,* wrongful termination of benefits and breach of fiduciary duties and adding her son, Charles Stewart, as a plaintiff, and Griffieon Agency, LLC and Fritz Griffieon as defendants. (ECF No. 12.)

On February 3, 2017, Ms. Stewart filed several arbitration counterclaims, claiming, *inter alia,* that Defendants RRL and IHT Insurance "took affirmative steps to wrongfully terminate

Stewart's health, vision, and dental coverage, among other benefits" and "[b]y virtue of her one-fourth membership interest in RRL, Stewart was/is entitled to continued benefits, including but not limited to health, vision, and dental coverage," along with, "RRL, IHT, Mayhill, W. Griffieon, and F. Griffieon breached their obligations to Stewart by discontinuing the benefits to which Stewart was entitled and remained entitled" and "Stewart is entitled to continued benefits on the same terms and conditions existing prior to the unlawful removal, and on the same terms and conditions governing the continued benefits provided to [others]." (Arbitration Countercl., ECF No. 57-1 at ¶¶ 50, 98–100.)

On August 9, 2017, Defendants moved this Court to stay these proceedings pending the outcome of the related arbitration proceeding, arguing that the arbitration would decide whether there were any remaining claims in the instant case. (ECF No. 33.) Through arbitration, Defendants sought an order requiring Ms. Stewart to execute the Membership Interest Redemption Agreement set forth in a specific form attached to the Buy/Sell Agreement, which includes a mutual release of claims. (*Id.* at 122–23.)

On October 4, 2017, the Court ordered Defendants to submit evidence of arbitration. (ECF No. 37.) Defendants submitted evidence of arbitration that same day. (ECF No. 38.) On October 5, 2017, the Court granted Defendants' Motion to Stay Pending Arbitration. (ECF No. 39.) The Court reasoned, "It would make little sense to proceed to trial if it is possible that the arbitration could result in Ms. Stewart executing a release of claims." (ECF No. 37 at 215.)

A three-day hearing was held before the arbitration panel on October 5, October 6, and November 3, 2017, where Ms. Stewart "was given full opportunity to present evidence over three hearing days, and made no challenge or objection to the amount of time available to her to present her counterclaims or defense of claims." (Final Arbitration Award, ECF No. 57-2 at 758.) In her

closing arbitration brief, Ms. Stewart sought damages relating to her health and life insurance benefits. (Ex. C, ECF No. 68-3.)

On December 8, 2017, the arbitration panel issued its decision. The panel unanimously found Ms. Stewart was properly removed as a member of RRL. (ECF No. 57-2 at 763.) The panel determined that during an October 24, 2014 managerial board meeting, and "[a]fter a discussion of the negative impact Ms. Stewart's actions [had] on IHT, the remaining members voted to suspend Ms. Stewart from IHT, and also adopted a plan of ending her participation in RRL by November 30, 2014." (*Id.* at 756.) The panel denied Ms. Stewart's counterclaims in their entirety. (*Id.* at 763.) The panel ordered Ms. Stewart to execute closing documents, including a mutual release of claims contained within the Membership Interest Redemption Agreement. (*Id.*)

Section 4 of the Membership Interest Redemption Agreement entitled Mutual Release, provides in subsection (b) that:

> The Redeemed Member [Ms. Stewart] and any Affiliate thereof (collectively with any of their heirs, executors, administrators, personal representatives, successors and assigns . . .) releases each of the Company [Firefly Agency LLC] and the Remaining Members, their officers, directors, shareholders, members, managers, beneficial owners, trustees, partners, Affiliates, employees, participants and agents) . . . from all actions, causes of action, suits . . . which [Ms. Stewart and any Affiliate thereof] now has or hereafter can, shall or may have for, upon or by reason of (i) any matter, cause or thing whatsoever from the beginning of the world to the date of this Agreement, and (ii) any matter, cause or thing whatsoever which arises from and after the date of this Agreement, including, without limitation, any matter or thing arising from or in connection with the Operating Agreement, the Buy/Sell Agreement or any transaction entered into by the Company . . . .

(Ex. A, ECF No. 68-1 at 1045–46.)

"Affiliates" is broadly defined as including "any officer, director, member, manager, beneficial owner, trustee, employee, participant, agent, heir, executor, administrator, personal representative, successor or assign of a party hereto." (*Id.* at 1042.)

The panel's decision was confirmed by the state trial court through the entry of judgment against Ms. Stewart, affirmed by the state appellate court, and the Supreme Court of Ohio twice declined to hear the case. (ECF No. 46 at 148.) Ms. Stewart has exhausted her appeals.

On September 10, 2019, Plaintiffs filed a Motion to Lift Stay Order. (ECF No. 45.)

On November 13, 2019, the Court granted Plaintiffs' order but not for the reasons put forth by Plaintiffs. (ECF No. 52.) The Court reasoned, "The arbitration panel has established the rights of the parties, and those rights are currently being enforced by the state court. Consequently, there are no remaining disputes for this Court to decide, as the release of claims Ms. Stewart has been ordered to sign, extends to the claims presently before the Court." (*Id.* at 460.) The Court ordered Plaintiffs to show cause why their case should not be dismissed. (*Id.*)

On January 13, 2020, Plaintiffs responded that the proposed mutual release provision set forth in the redemption agreement does not extend to Plaintiffs' ERISA claims, and the mutual release of claims would therefore not extinguish all claims in the present litigation. (ECF No. 63 at 978–79.)

On April 7, 2020, the parties were ordered to submit further briefing on the issue of whether the arbitration panel's decision and the mutual release of claims extends to the ERISA claims in this case and whether the Court should dismiss these claims as a result thereof. (ECF No. 67 at 1029.) On April 21, 2020, Defendants filed their brief in response. (ECF No. 68.) On May 15, 2020, Plaintiffs filed their reply brief. (ECF No. 70.)

II. DISCUSSION

After considering the submissions by both parties, the Court concludes that both the mutual release of claims and the arbitration panel's decision extend to the ERISA claims in this case and warrant dismissal of Plaintiffs' claims.

A. Mutual Release of Claims

Plaintiffs argue that the mutual release "would not serve to extinguish the[ir] ERISA claims nor does [it] absolve any of the plan fiduciaries from liability" and only "pertains to buyouts of members' interests in the company." (ECF No. 63 at 979.) Plaintiffs provide no support for their contention, whereas Defendants point out that the broad language of the mutual release pertains to any causes of action Ms. Stewart and Mr. Stewart, as her Affiliate, ever had before and since the February 28, 2020 effective date of the Member Interest Redemption Agreement (the "Agreement") against those she identifies in her Amended Complaint as the Plan fiduciaries, Defendants IHT Insurance and RRL, which comprise the Company, as defined in the Agreement as Firefly Agency LLC,[3] and Defendant Fritz Griffieon, who is a Remaining Member, as defined in the Agreement. (ECF No. 68-1 at 1042.)

Though Plaintiffs only argue that the Agreement's mutual release does not extend to "plan fiduciaries,"[4] Griffieon Agency, LLC and the Plan itself are also defendants in this case, and the Court finds that the mutual release also encompasses these defendants. Remaining Member William Griffieon is the sole member of Griffieon Agency, LLC,[5] and as an agent of the Company, Griffieon Agency, LLC falls within the Agreement's definition of Affiliates.

Similarly, as the Company's administrator of benefits, the Plan also falls within the Agreement's definition of Affiliates. *See Halldorson v. Wilmington Tr. Ret. & Institutional Servs. Co.*, 182 F. Supp. 3d 531, 543–46 (E.D. Va. 2016) (collecting cases and determining that a general release covered a plan because the plan was an affiliate of the employer). Furthermore, because

[3] Firefly Agency, LLC is the entity formerly known as Defendant IHT Insurance Group LLC and is also the successor-in-interest to RRL Holding Company of Ohio, LLC.
[4] Plaintiffs' Amended Complaint identifies the Plan fiduciaries as IHT Insurance Group LLC, RRL Holding Company of Ohio, and Fritz Griffieon. (Am. Compl. ¶¶ 14, 54, ECF No. 12 at 48, 52.)
[5] (W. Griffieon Aff. ¶ 2, Ex. G, ECF No. 68-7 at 1114.)

the Company and the Plan are so closely related, the mutual release need not explicitly reference the Plan for the release of claims to be enforced against it. *Sullivan v. Cap Gemini Ernst & Young United States*, 573 F. Supp. 2d 1009, 1021–22 (N.D. Ohio 2008) (collecting cases and "conclud[ing] that [the employer] and the Plan are so closely associated as to be 'affiliates' within the meaning of the [w]aiver").

Furthermore, the mutual release covers any cause or matter occurring before or after the effective date of the Agreement, without limitation. (*Id.* at 1045–46.) The mutual release therefore covers all claims, past, present, and future and extends to Plaintiffs' ERISA claims in the present case. As such, Plaintiffs' claims warrant dismissal.

B. The Arbitration Panel's Decision

Dismissal of Plaintiffs' claims is further warranted, because the underlying facts and issues central to Plaintiffs' claims before this Court were already decided in arbitration, and the Court finds that the arbitration panel's decision has preclusive effect in the instant case. "There is significant precedent holding that an arbitrator's decision has preclusive effect in federal court." *Schreiber v. Philips Display Components Co.*, 580 F.3d 355, 367 (6th Cir. 2009) (citing *Cent. Transp., Inc. v. Four Phase Sys., Inc.*, 936 F.2d 256, 257 (6th Cir. 1991) (finding "plaintiffs' remaining claims were based on facts already determined in favor of the defendants by the arbitration panel")).

As the state trial court submitted the issue of whether Ms. Stewart was properly removed as a member of Defendant RRL to arbitration and later confirmed the arbitration panel's final award determining that Ms. Stewart was properly removed and denying her counterclaims for wrongful termination of benefits and breach of fiduciary duties, the Court turns to Ohio law concerning the doctrine of res judicata. "Under the doctrine of res judicata, state court judgments

are given the same preclusive effect in federal court as they would have received in the courts of the rendering state." *Stotts v. Pierson*, 976 F. Supp. 2d 948, 959 (S.D. Ohio 2013).

Under Ohio law, "[t]he doctrine of res judicata encompasses the two related concepts of claim preclusion, also known as res judicata or estoppel by judgment, and issue preclusion, also known as collateral estoppel." *O'Nesti v. DeBartolo Realty Corp.*, 2007-Ohio-1102, ¶ 6, 113 Ohio St. 3d 59, 61, 862 N.E.2d 803, 806.

The Ohio Supreme Court set forth three requirements for the application of collateral estoppel. "Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action." *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 1994 Ohio 358, 637 N.E.2d 917.

"The essential test in determining whether the doctrine of collateral estoppel is to be applied is whether the party against whom the prior judgment is being asserted had full representation and a 'full and fair opportunity to litigate that issue in the first action.'" *Cashelmara Villas Ltd. Partnership v. DiBenedetto*, 87 Ohio App.3d 809, 813, 623 N.E.2d 213 (1993) (quoting *Hicks v. De La Cruz*, 52 Ohio St.2d 71, 74, 369 N.E.2d 776 (1977)). Crucially, and contrary to Plaintiffs' assertion otherwise, "[i]ssue preclusion applies even if the causes of actions differ." *Id.*

i. Facts and Issues in the Prior Arbitration Action

In the case at bar, Plaintiffs claim that in December 2014, Defendant Fritz Griffieon spearheaded an effort to terminate Ms. Stewart's membership interest in RRL and her subsequent termination was done with the intent to interfere with health and life insurance benefits, protected rights, to which both she and her beneficiary, Mr. Stewart, were entitled to under ERISA. (ECF No. 12 at 49–51.) Plaintiffs further claim that Defendants IHT Insurance, RRL, and Fritz Griffieon

breached fiduciary duties owed to Plan participants and beneficiaries and failed to administer the terms of the Plan evenly by "not treat[ing] alike similarly-situated persons." (*Id.* at 52–53.)

Though the state court ordered the parties to arbitration to determine whether Ms. Stewart was properly removed as a member of Defendant RRL, it was Ms. Stewart who expanded the scope of arbitration by seeking permission to assert various counterclaims against Defendants RRL and IHT Insurance and other parties she joined to the arbitration proceedings. On February 3, 2017, almost a year after filing her Amended Complaint in this Court, Ms. Stewart willingly submitted to arbitration, with the assistance of counsel, the facts and issues of her alleged wrongful termination from the Plan for the purported reason to intentionally interfere with her entitlement to benefits and the Plan fiduciaries' alleged breach of fiduciary duties owed to her by discontinuing her benefits, including more favorable treatment of others similarly situated. (ECF No. 57-1.)

Ms. Stewart claimed in arbitration that she was wrongfully terminated without notice on December 30, 2014 and shortly thereafter, "RRL and IHT took affirmative steps to wrongfully terminate Stewart's health, vision, and dental coverage, among other benefits" and she was "entitled to continued benefits on the same terms and conditions existing prior to the unlawful attempted removal, and on the same terms and conditions governing the continued benefits provided to [others]." (*Id.* at 704, 709.) In support of her claims, Ms. Stewart submitted detailed damages calculations for both her health and life insurance benefits to the arbitration panel. Thus, the facts and issues concerning Ms. Stewart's entitlement to benefits and the Plan fiduciaries' alleged breach of fiduciary duties were actually and directly heard before the arbitration panel.

ii. Determined by a Court of Competent Jurisdiction

The arbitration panel unanimously found Ms. Stewart was properly removed as a member of RRL, and that the remaining members adopted a plan for her removal prior to December 2014.

(ECF No. 57-2 at 763.) The panel denied Ms. Stewart's counterclaims in their entirety and rendered an award "in full resolution and settlement of all claims and counterclaims submitted to this Arbitration." (*Id.* at 763–64.) The panel's decision was confirmed by the state trial court through the entry of judgment against Ms. Stewart, affirmed by the state appellate court, and the Supreme Court of Ohio twice declined to hear the case. (ECF No. 46 at 148.) Therefore, the facts and issues concerning Ms. Stewart's entitlement to benefits and her breach of fiduciary duty claims were determined by a court of competent jurisdiction.

iii. Parties in Privity with a Party to the Prior Action

Furthermore, the parties to the present case were either parties to the arbitration or in privity with those parties to the arbitration. Ohio courts apply "a relaxed concept of privity . . . for purposes of res judicata" and do not require a contractual or beneficiary relationship. *State ex rel. Davis v. Pub. Emples. Ret. Bd.*, 2007-Ohio-6594, ¶ 23, 174 Ohio App. 3d 135, 145, 881 N.E.2d 294, 301. Instead, a "'mutuality of interest, including an identity of desired result,' might . . . support a finding of privity." *O'Nesti v. DeBartolo Realty Corp.*, 862 N.E.2d 803 (2007) (quoting *Brown v. Dayton*, 2000-Ohio-148, 89 Ohio St. 3d 245, 730 N.E.2d 958, 962). "Mutuality . . . exists only if the person taking advantage of the judgment would have been bound by it had the result been the opposite." *Id.* "An interest in the result of and active participation in the original lawsuit may also establish privity." *O'Nesti,* 862 N.E.2d at 806.

Here, Plaintiffs share a beneficiary relationship, so the relaxed concept of privity need not apply. The other non-parties to the arbitration, the Plan and Griffieon Agency, LLC are privies for purposes of res judicata. Neither the Plan nor Griffieon Agency, LLC seek "personally tailored relief to fit their unique circumstance or factual situation" and "their legal interests are the same" as the other Defendants and parties to arbitration. *Brown*, 730 N.E.2d at 962 (finding taxpayers in

privity with each other for purposes of res judicata where they sought the same general disallowance of a local ordinance for the same reasons). Likewise, had the arbitration panel determined Ms. Stewart's benefits were wrongfully terminated and that the Plan fiduciaries breached any fiduciary duties owed to her, the Plan and Griffieon Agency, LLC would have been bound by that result. Therefore, the Court finds the Plan and Griffieon Agency, LLC are privies for purposes of res judicata.

Accordingly, all three elements of collateral estoppel: 1) actual and direct litigation; 2) determination by a court of competent jurisdiction; and 3) privity have been met, and collateral estoppel applies to Plaintiffs' ERISA claims before this Court.

iv. Full and Fair Opportunity to Litigate the Issue in the First Action

Not only are the three elements of collateral estoppel satisfied, but Ms. Stewart had a full and fair opportunity to litigate the issues surrounding her removal from RRL and termination of benefits at arbitration. There, Ms. Stewart "was given full opportunity to present evidence over three hearing days and made no challenge or objection the amount of time available to her to present her counterclaims or defense of claims." (ECF No. 57-2 at 758.) Thus, she cannot relitigate the same underlying facts and issues here.

As such, Plaintiffs' ERISA claims are subject to issue preclusion and further warrant dismissal.

III. CONCLUSION

For the reasons stated above, Plaintiffs' claims are **DISMISSED WITH PREJUDICE.** Consequently, Plaintiffs' pending motions (ECF Nos. 50 and 51) are **DENIED** as moot.

The Clerk is instructed to enter final judgment in favor of Defendants on all of Plaintiffs' claims.

IT IS SO ORDERED.

/s/ James L. Graham
JAMES L. GRAHAM
United States District Judge

DATE: June 15, 2020

APPENDIX C

Appendix	Judgement Entry	Docket no.	Court •Pages 21-23
C	Filed: March 8, 2016	16-cv- 001761	In the Court of Common Pleas Franklin County, Ohio
Case Caption: Merrilee Stewart v. IHT Insurance Agency Group, et al, Case No. 16-cv-001761			
Description: Defendants Notice of filing notice of removal (R. OC944, U89)			
Status: Case was removed to Federal Court by Defendants			

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

MERRILEE STEWART, Plaintiff, -vs- IHT INSURANCE AGENCY GROUP LLC WELFARE BENEFITS PLAN, ET AL., Defendants.	)	Case No. 16-cv-001761 **NOTICE OF FILING NOTICE OF REMOVAL** James R. Carnes (0070005) Shumaker, Loop & Kendrick, LLP 1000 Jackson Street Toledo, Ohio 43604 Telephone: 419-241-9000 Fax: 419-241-6894 Email: jcarnes@slk-law.com Attorneys for Defendants

* * *

Pursuant to 28 U.S.C. § 1446(d), Defendants hereby give notice that on March 8, 2016, they removed the above-captioned case pursuant to 28 U.S.C. § 1441(a)-(b) to the Eastern Division of the United States District Court for the Southern District of Ohio. A copy of the Notice of Removal with its exhibits is attached hereto as Exhibit A.

Respectfully Submitted,

s/James R. Carnes
James R. Carnes (0070005)
Shumaker, Loop & Kendrick, LLP
Attorneys for Defendants

SLK_TOL:#2689031v1

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of March 2016, a true and accurate copy of the foregoing document was filed electronically and served via Regular U.S. Mail and E-Mail upon the following:

D. J. Young, III
Firestone, Brehm, Wolf, Whitney & Young LLP
15 West Winter Street
Delaware, Ohio 43015
Attorneys for Plaintiff

s/James R. Carnes
James R. Carnes (0070005)
Shumaker, Loop & Kendrick, LLP
Attorneys for Defendants

APPENDIX D

Appendix	Judgement Entry	Docket no.	Court ♦Pages 24-25
D	Filed: March 14, 2018	2016-CV- 0127	In the Court of Common Pleas Wood County, Ohio
Case Caption: Merrilee Stewart v. Fritz W. Griffioen, et al			
Description: Order Continuing Stay, the Court ordered this case to be stayed, pending arbitration, on September 8, 2017 and on March 12, 2018 Defendants filed a Status Report and requested the matter remain stayed.			
Status: Case remains stayed			

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

Merrilee Stewart,

Plaintiff,

vs.

Fritz W. Griffioen, et al.,

Defendants.

Case No. 2016-CV-0127

ORDER CONTINUING STAY

Judge Matthew L. Reger

This case is before the Court for the purpose of docket review. On September 8, 2017, this Court ordered this case to be stayed until such time as the Arbitration in the related matter pending in the Franklin County Court had been concluded. On March 12, 2018, Defendants herein filed a Status Report indicating the arbitration had been held but that Plaintiff had failed to comply with the Arbitrator's award and has filed an Appeal of that decision. Further, Defendants requested this matter remain stayed until a decision has been entered on the appeal.

A review of the case file, together with the updated information, finds this matter shall remain stayed until Plaintiff's appeal of the arbitrator's award has been determined.

IT IS SO ORDERED.

Judge Matthew L. Reger

xc: Merrilee Stewart, pro se
James Carnes, Esq.

APPENDIX E

Appendix	Judgement Entry	Docket no.	Court •Pages 26-34
E	Decided & filed: November 10, 2015	15-cv-1842	Franklin County Ohio Court of Common Pleas Civil Division
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al			
Description: Stay Order, pending arbitration, from Franklin County Ohio Court of Common Pleas Civil Division, Case No. 15CV1842, Judge Kim J. Brown			
Status: Case remains stayed			

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

RRL HOLDING COMPANY OF OHIO, LLC, et al.,	:	
Plaintiffs,	:	
	:	Case No. 15CVH-1842
v.	:	
	:	JUDGE K. BROWN
MERRILEE STEWART, et al.,	:	
Defendants.	:	

DECISION AND ENTRY DENYING PLAINTIFFS' MOTION TO SHOW CAUSE AND GRANTING IN PART PLAINTIFFS' MOTION TO STAY PROCEEDINGS PENDING ARBITRATION

Rendered this 10th day of November, 2015

This matter is before the Court upon the Motion to Compel Arbitration and Stay Litigation, filed by Plaintiffs RRL Holding Company of Ohio, LLC and IHT Insurance Agency Group, LLC (hereinafter collectively "Plaintiffs") on July 20, 2015. On August 13, 2015, Defendants Merrilee Stewart and TRG United Insurance, LLC (hereinafter collectively "Defendants") filed a Memorandum Contra. Plaintiffs filed their Reply on August 28, 2015.

This matter is also before the Court upon Plaintiffs' Motion to Show Cause, filed September 18, 2015. On October 2, 2015, Defendant Merrilee Stewart (hereinafter "Stewart") filed a Memorandum Contra. Plaintiffs filed a Reply on October 12, 2015.

The motions are fully briefed and ripe for consideration by the Court.

BACKGROUND

Plaintiff RRL Holding Company of Ohio, LLC (hereinafter "RRL") is the sole member and owner of Plaintiff IHT Insurance Agency Group, LLC (hereinafter "IHT"). IHT's primary business operation is the sale and service of insurance-related products to consumers and businesses through its network of independent producers. RRL and IHT are

each governed by operating agreements. (Am. Comp. Exs. A, C). RRL is also regulated by a buy/sell agreement executed in 2012. (Am. Comp. Ex. G).

Until at least December 2014, Stewart was a member of RRL and the president of IHT. Accordingly to Plaintiffs, in early 2014, Stewart began missing work and neglecting her duties as president. In October 2014, RRL's members confronted Stewart after discovering that she had created a competing entity, TRG United Insurance, LLC (hereinafter "TRG"). Plaintiffs told Stewart that her creation of TRG violated the terms of a non-compete provision contained in the buy/sell agreement. Stewart and RRL engaged in a series of unsuccessful negotiations relating to the redemption of her membership interest in RRL. Ultimately, on December 30, 2014, Plaintiffs notified Stewart's legal counsel that she had been involuntarily removed from RRL and that her relationship with IHT had been terminated.

On March 2, 2015, Plaintiffs initiated the instant action, alleging that Stewart has improperly retained client data and a cell phone paid for by Plaintiffs. Plaintiffs further allege that, without authority to do so, Stewart caused $19,009.44 to be removed from IHT's operating account. Plaintiffs assert that Stewart and TRG have breached their fiduciary duty to Plaintiffs and have improperly converted Plaintiffs' property. Plaintiffs request monetary damages, replevin, and injunctive relief.

Stewart and TRG filed a combined Answer and Stewart asserted eight counterclaims. Stewart submits that she remains an active member of RRL, as her interest has not been properly redeemed under either RRL's operating agreement or buy/sell agreement. Stewart alleges that Plaintiffs have breached various agreements since her alleged termination, by failing to make guaranteed payments and disbursements, failing to provide her with health and life insurance, and failing to pay her commission payments. Stewart further asserts that

Plaintiffs have made various defamatory statements relating to her association with RRL and IHT.

On May 28, 2015, the parties met with Visiting Judge John Bender to discuss a resolution to Plaintiffs' request for a preliminary injunction. The parties executed an Agreed Order, consenting that during the pendency of this action: 1) Defendants will not hold themselves out as being affiliated with Plaintiffs; 2) Defendants will refrain from destroying any data; 3) Defendants will refrain from accessing IHT's financial accounts; 4) Defendants will not solicit business from IHT's employees, agents, or producers, or use any of IHT's trade secrets; and 5) Plaintiffs will timely forward all mail and email addressed to Stewart.

Plaintiffs now move the Court to stay this action and compel Defendants to submit their defenses and counterclaims to binding arbitration. Plaintiffs further move the Court for an order to show cause, alleging that Stewart violated the May 28, 2015 Agreed Order by sending an email holding herself out as a current member of IHT.

LAW AND ANALYSIS

Motion to Show Cause

On September 18, 2015, Plaintiffs moved this Court for an Order to Show Cause as to why Stewart should not be held in contempt for violating the terms of the May 28, 2015 Agreed Entry. Plaintiffs allege that Stewart contacted IHT's human resources manager, LizAnn Mayhill, on August 27, 2015, stating that her health insurance had been improperly cancelled, demanding that IHT place her back on IHT's group plan, and requesting that IHT reimburse her for premium payments that she had made out of pocket. Plaintiffs attached Stewart's email to Ms. Mayhill in support of their motion.

Plaintiffs submit that Stewart's email violated Section I of the Agreed Entry, which states, in pertinent part:

I. Defendants Stewart and TRG, agree to refrain from:

a. representing to any person, business, or entity that Defendants are employees, agents, authorized representatives, producers, officers, managers or doing business as, or in any way working with or for, Plaintiffs IHT or RRL; ...

d. representing to any person, business, or entity that Defendant Stewart has any authority to enter into any business arrangements, agreements, contracts, or transactions that in any way affects IHT or RRL.

Stewart denies violating the Agreed Entry, submitting that she merely sent an email to IHT, requesting the same reimbursement for health insurance premiums that other past members have received from RRL.

The Court finds insufficient evidence to warrant an order to show cause at this time. Even if Stewart's intention was indeed to hold herself out as a current member of IHT to Ms. Mayhill, as Ms. Mayhill is an employee of IHT, the Court cannot find that Stewart violated the spirit or purpose of the parties' agreement. The Court finds Plaintiffs' motion not well taken.

Motion to Compel Arbitration

On July 20, 2015, Plaintiffs moved the Court to stay this action and compel Defendants to submit their joint defenses and Stewart's counterclaims to binding arbitration. Plaintiffs submit that Defendants' defenses and Stewart's counterclaims relate to the buy/sell agreement which contains an agreement to arbitrate disputes. The buy/sell agreement states, in pertinent part:

> **§ 21. Arbitration.** Except for a dispute as to a Member's or former Member's Disability or Permanent Disability which dispute is resolved in accordance with § 5(b) hereof, any and all disagreements, disputes, or controversies arising with respect to this Agreement or its application to circumstances not clearly set forth in this Agreement, or otherwise with respect to the subject matter of this Agreement and which are not to be determined or determinable under this Agreement by the parties, shall be decided by binding arbitration...

Defendants offer two arguments in opposition to Plaintiffs' motion. First, Defendants submit that neither IHT nor TRG is a signatory or beneficiary to the buy/sell agreement. Although the buy/sell agreement was executed between the "Members" and the "Company," the "Company" is defined to include "Affiliates of the Company." See Buy/Sell Agreement, p. 3. "Affiliate of the Company" is defined as any entity in which RRL owns more than 50% of the voting interest. *Id.* p. 2. This definition includes IHT, a wholly owned subsidiary of RRL. Accordingly, while IHT may not be a signatory to the buy/sell agreement, IHT is an affiliate of the company and is bound by its arbitration clause. Defendants are correct, however, in regards to TRG. TRG is neither a signatory nor a beneficiary to the buy/sell agreement, and is therefore not contractually obligated to participate in arbitration.

Next, Defendants submit that the issues Plaintiffs seek to refer to arbitration are outside the scope of the buy/sell agreement. Stewart submits that her claims and her defenses to Plaintiffs' claims are not related to the buy/sell agreement, and therefore, she should not be compelled to submit them to arbitration. The Court disagrees. Stewart's claims and her defenses to Plaintiffs' claims are premised on her position that her membership interest in RRL was not properly redeemed pursuant to the buy/sell agreement or RRL's operating agreement. This position requires an interpretation of the buy/sell agreement, a matter which must be submitted to arbitration.

Although Plaintiffs only requested that Defendants' defenses be submitted to arbitration, Plaintiffs' affirmative claims must be arbitrated as well. Plaintiffs asserted their claims assuming that Stewart was properly separated from RRL pursuant to the buy/sell agreement. However, as Stewart has now challenged this element of Plaintiffs' claims, Plaintiffs must now demonstrate that they properly terminated her interest pursuant to the

buy/sell agreement. As this also necessitates an interpretation of the buy/sell agreement, Plaintiffs' claims must also be arbitrated.

CONCLUSION

Accordingly, Plaintiffs' Motion to Show Cause, filed September 18, 2015, is hereby **DENIED**. Plaintiffs' Motion to Compel Arbitration and Stay Litigation is hereby **GRANTED IN PART.**

The Court hereby **ORDERS** that Plaintiffs RRL and IHT and Defendant Stewart submit their affirmative claims against each other and defenses to such claims to binding arbitration. Plaintiffs' claims against TRG, including TRG's defenses, are hereby **STAYED** pending the resolution of the arbitration process.

IT IS SO ORDERED.

Franklin County Court of Common Pleas

Date: 11-10-2015

Case Title: RRL HOLDING COMPANY OHIO LLC ET AL -VS- MERRILEE STEWART ET AL

Case Number: 15CV001842

Type: ORDER TO STAY

It Is So Ordered.

/s/ Judge Kim Brown

Electronically signed on 2015-Nov-10 page 7 of 7

Court Disposition

Case Number: 15CV001842

Case Style: RRL HOLDING COMPANY OHIO LLC ET AL -VS-
MERRILEE STEWART ET AL

Case Terminated: 17 - Bankruptcy/Interlocutory Appeal

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0018422015-09-1899980000
   Document Title: 09-18-2015-MOTION FOR RULE TO SHOW CAUSE - PLAINTIFF: RRL HOLDING COMPANY OHIO LLC
   Disposition: MOTION DENIED

2. Motion CMS Document Id: 15CV0018422015-07-2099980000
   Document Title: 07-20-2015-MOTION TO STAY - PLAINTIFF: RRL HOLDING COMPANY OHIO LLC
   Disposition: MOTION GRANTED IN PART

APPENDIX F

Appendix	Judgement Entry	Docket no.	Court •Pages 35-53
F	Pending	2021-0385	The Supreme Court of Ohio
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al			
Description: Motion for Reconsideration, On Appeal from Tenth District Court of Appeals Case No. 20-AP-674, from lower court (C.P.C. 15-CV-1842)			
Status: Filed and accepted on June 21, 2021, Decision is pending			

IN THE SUPREME COURT OF OHIO
COLUMBUS, OHIO

RRL Holding Company of Ohio, LLC, et al.,	:	
	:	**CASE NO. 2021-0385**
Appellees,	:	
v	:	On Appeal from Tenth District Court of Appeals
	:	Case No. 20-AP-674
Merrilee Stewart, et al.,	:	
Appellants.	:	(C.P.C. 15-CV-1842)

MOTION FOR RECONSIDERATION

OF APPELLANT MERRILEE STEWART

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MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

I. Introduction

Now comes, Merrilee Stewart, Pro Se on behalf of Appellant Merrilee Stewart ("Ms. Stewart") with the forgoing Motion for Reconsideration of the Supreme Court of Ohio's Jurisdiction Decline Entry of June 8, 2021 which cited Ohio S.Ct.Prac.R.7.08(B)(4) as the reason. The Entry is attached as Exhibit A and rule is quoted below:

> Determination of Jurisdiction Rule, Ohio S.Ct.Prac.R.7.08 "(4) Decline to accept the appeal. In declining to accept an appeal the Supreme Court has determined that one or more of the following are applicable after review of the jurisdictional memoranda:
> (a) The appeal does not involve a substantial constitutional question and should be dismissed;
> (b) The appeal does not involve a question of great general or public interest;
> (c) The appeal does not involve a felony;
> (d) The appeal does involve a felony, but leave to appeal is not warranted.")

This motion for reconsideration is pursuant to Ohio S.Ct.Prac.R.18.02(B)(1), is timely filed within 10-days of the entry of June 8, 2021 and does not constitute a re-argument of the case.

It would be utterly impossible to re-argue a case that has been stayed since November 10, 2015 and has yet to be afforded any due process rights as are guaranteed by the Constitution of the United States. This stayed docket contains a string of purported "Final Appealable Decisions" from multiple special proceedings, initiated by the Appellees, in direct retaliation for Ms. Stewart fulfilling her duty to report White Collar criminal activity on-going at Appellee Firefly Agency LLC ("Firefly"), formerly known as IHT Insurance Agency Group, LLC.

This special proceeding is merely one of the many scorched earth tactics used to attempt to starve the messenger and silence the message.

In addition, the Franklin County Common Pleas Court ("CPC") Judge Kim J. Brown fails to abide by the higher court's decisions, ignores Federal Law, refuses to grant Ms. Stewart's rights

to sue as provided by HUD and EEOC and leaves in place an abusive preliminary agreed entry of May 28, 2015 which includes a crippling non-compete.

In further defiance of the higher court's decision, this CPC Judge sought to re-write closing documents, that were already certified by the Tenth District Court of Appeals and actively allowed the Criminal Enterprise, Appellee Firefly, to make Appellee RRL a dead entity and subsequently seize all of RRL Assets, in violation of the laws of the State of Ohio and the higher courts decision.

Finally, Appellant Merrilee Stewart moves this court to accept jurisdiction and/or reverse and remand to an open docket with a referral to the Franklin County Ohio Prosecutor for criminal prosecution of all parties associated with the White-Collar Felonies.

II. Reasons to accept Jurisdiction not previously argued and not apropos to Ohio S.Ct.Prac.R.7.08 (4)

This motion raises new and intervening substantial grounds which should warrant a reconsideration of jurisdiction. The intervening circumstances of a substantial or controlling effect not previously presented include new documented felonies which substantiate a pattern of corruption leading to compounding constitutional and federal law infringements.

The occurrence of these new facts and circumstances should lead this Court to believe that all constitutional and federal law issues brought forth in the record and the compounding injuries to Ms. Stewart are caused by officers of the court by committing Fraud Upon the Court.

Ms. Stewart's Jurisdictional Memorandum argued Fraud upon the Court by officers of the court, Constitution and Great Public Interest. The Entry cited the reason of Ohio S.Ct.Prac.R.7.08 (4), which is sections (A) and (B) are apropos to Constitution and Great Public Interest however,, not the Fraud Upon the Court.

Whereas, the issue of ongoing, now documented Felonies (emphasis) was not argued in the Memorandum in support of Jurisdiction.

Whereas, the Ohio S.Ct.Prac.R.7.08 (4) does not apply to or consider Fraud Upon the Court by officers of the Court and the Ohio Constitution grants this Supreme Court exclusive authority to regulate the practice of law and all matters relating to the practice of law (emphasis).

Now therefore, this motion for reconsideration is apropos and focuses solely on the documented and proven felonies committed by Appellees, not previously argued, and the documented Fraud upon the Court by Officers.

III. Felonies documented and not previously argued substantiates a pattern of corruption

The forgoing information formally documents the most recent incidents of Felonies committed by Appellees and substantiates a pattern of corruption aided and abetted by Officers of the Court. This adds to the previously documented whistleblower retaliation and is a formal request for referral to a Franklin County prosecutor.

Recent documentation from the United States Department of Treasury – Internal Revenue Service ("IRS") confirmed the Identity Theft, Mail Fraud and Tax Evasion perpetrated upon Merrilee Stewart and the public by Appellee Firefly. In addition, Appellant has received recent confirmation of the continuing practice of placing accounts in unknown or orphan status (i.e., the embezzlement of $8 to $10 million, documented and provable).

A. The pattern of corruption

Appellee Firefly is a multi-state insurance aggregator headquartered in Dublin, Ohio, Franklin County.

On Friday June 4, 2021 Ms. Stewart received a confirmation that the practice of placing accounts into an unknown category by LizAnn Mayhill (the spouse of the President of Firefly) continues today. Unless the associated accounts payable obligations (monies) are sequestered, then the systemic pattern of fraud and theft in taking money belonging to others (i.e.,

embezzlement) continues unabated. This is not accounting errors or omissions. It is taking funds and distributing those funds to the owners instead of sequestering the funds until the proper owner is identified. Furthermore, the taxing authorities in multiple states are shorted in their associated revenue from this embezzlement.

The establishment of an account as "unknown" (with embezzlement now easily exceeding $8 to $10 Million) is a purposeful procedure of intentional theft and fraud. The continuation of this practice for over a decade establishes this activity as a **pattern** (emphasis).

This pattern of systemic embezzlement was denied in an affidavit crafted by the law firm of Shumaker, Loop & Kendrick, signed by the company CFO, Fritz Griffioen, and presented to the local police, to insurance companies and the courts claiming that the "unknowns were totally false". This fraudulent affidavit was used to obstruct justice, halt a police investigation and halt two insurance company investigations. The fact that the law firm of Shumaker, Loop, and Kendrick drafted and facilitated the presentation of this false affidavit constitutes subordination of perjury.

Firefly's additional documented and collaborated criminal activity includes:

- 106 verified counts of mail fraud, perpetrated upon insurance buying customers.
- Documented redlining, violations of the Fair Housing Act and, upon belief, Anti-trust activity by forcing agents (suppliers) to discriminate and withhold products and services from persons in underserved communities who do not meet Firefly's "**Affluent Middle-Class Rules**".
- Tax Evasion estimated to be at least $3 to $5 million.

B. Whistleblower Retaliation, Identity Theft, Mail Fraud and Tax Evasion

Perhaps the most troubling, is the ongoing and most recent **Whistleblower Retaliation** perpetrated against the two primary inside informants who personally met face to face with the Federal Bureau of Investigation ("F.B.I."), Non-Party Norman L. Fountain and Appellant Merrilee Stewart.

Citizens must believe and trust the integrity of investigations and must be afforded the protections **guaranteed by state and federal law when they fulfill their duty to report criminal activity.** The Enforcement of Whistleblower protections is an essential component to the quality of justice which lies firmly in the hands of the judiciary and investigators seeking inside informants.

One needs only to examine the timeline and documentation of each of the timely reports made to the proper authorities and you clearly see **1) Criminal Federal Felonies continue, 2) Criminal Federal Felonies have compounded, and 3) Retaliation continues.**

The most recent Fraud, Theft, Identity Theft, Mail Fraud and Tax Evasion committed by Firefly and perpetrated against Merrilee Stewart, a documented Whistleblower, are in retaliation for the reporting of criminal activity to the proper local and federal authorities including, but not limited to SEC, IRS, FTC, OSHA, EBSA, FIO and DOJ Anti-trust division and HUD involving the overt discrimination, redlining, and violations of the Fair Housing Act.

This recent incident of retaliatory harm inflicted upon Merrilee Stewart for fulfilling her duty to report White Collar Criminal Activity on-going at Firefly is another piece of the pattern of documented, collaborated and systemic organized crime schemes perpetrated by Firefly for more than a decade. Again, these acts include over $8 to $10 million in embezzlement, mail fraud, tax evasion of $3 to $5 million, civil rights violations and, upon belief, anti-trust violations in the withholding of access to products and services from our underserved communities.

Specifically, Firefly mailed to Ms. Stewart a fraudulent 1099 purporting a payment of $19,009.44 was paid to her by Firefly in 2019. This fraudulent IRS 1099-misc form was mailed to Ms. Stewart postmarked January 24, 2020.

On May 19, 2020 Ms. Stewart filed the Federal Trade Commission Report No. 118680619 and the Identity Theft Affidavit Form No. 1545-2139.

On April 26, 2021 the Department of the Treasury - Internal Revenue Service ("IRS") provided Merrilee Stewart a **verification of this Identity Theft.** (Notice no. CP01C, ID 792774 quoted: ("We verified your identity theft documents"). This IRS document effectively confirms Firefly's additional Federal Felonies of Mail Fraud, Whistleblower Retaliation, Identity Theft and the associated Tax Evasion to the City, State and Federal governments with the transmittal and filing of the fraudulent tax reporting document.

On April 23, 2021 Merrilee Stewart received the Whistleblower verification from the Department of the Treasury – Internal Revenue Service in Washington, D.C. 20224. This letter verified receipt of the Form 211 and the assigned whistleblower claim Report No. 2021-008763.

On May 14, 2021, Merrilee Stewart filed a Dublin, Ohio Police Report Police Report No. 211340350.

On May 31, 2021 Merrilee Stewart filed a US Department of Labor Occupational Safety and Health Administration Notice of Whistleblower Complaint Report No. 0MB 1218-0236.

On June 6, 2021 Merrilee Stewart submitted an Ohio Civil Rights Commission as a formal complaint of retaliation.

In another incident of documented Identity Theft, discovered on May 13, 2021 was a 2020 1099 Interest document issued by Firefly, using non-party Norman L. Fountain's social security number, fraudulently purporting he was paid monies. This was postmarked on January 25, 2021

and mailed to Merrilee Stewart. On June 3, 2021 a report was filed with the Federal Trade Commission Report No. 134290293 along with the Identity Theft Affidavit Form No. 1545-2139.

These new malicious acts of Identity Theft, Mail Fraud and Tax Evasion are documented felonies.

The FBI and the IRS have added these most recent incidents of Identity Theft, Mail Fraud and Tax Evasion perpetrated upon Appellant Merrilee Stewart and Non-party Norman L. Fountain by Firefly to their cases.

IV. Fraud Upon the Court is not apropos to Ohio S.Ct.Prac.R.7.08 (4)

A. Preparatory Statement

Officers of the courts, including the lawyers and judges in Ohio, take an oath which includes the duty to defend the constitution and laws of the United States of America.

- What if these officers of the Ohio courts egregiously perverted the justice system, utilized Fraud Upon the Court, and blocked a citizen's constitution rights to procedural due process?
- What if these officers of the Ohio courts grasped power as if they were the King, judge, jury and executioner, and usurped those constitutional powers belonging to the people?

Then shall not, as the final Arbitrators of the Law and guardians and interpreters of the constitution, the Supreme Court step in and ensure the American people the promise of equal justice under the law?

Fraud upon the court by officers of the court is a substantial issue in this case. This Fraud Upon the Court is documented and provable.

B. Introduction

New events are unequivocal proof of Fraud upon the courts facilitated by Shumaker, Loop & Kendrick's lead attorney James R. Carnes ("Shumaker") in concert of effort with the Ohio lower court Judge Kim J. Brown ("CPC Judge").

Ohio Supreme Court jurisdiction is especially apropos in view of new facts and circumstances which connect and implicate officers to the court in committing Fraud Upon the Court.

This Fraud Upon the court, by the officers of the court, deprived Appellant Merrilee Stewart of her constitutional due process rights, halted the police and insurance investigations that were underway and inflicted punishment, all resulting from fulfilling her duty to report White Collar Crimes (the "Crime Reports") that were witnessed firsthand while in the position of president of Appellee Firefly.

The aforementioned occurrence of new facts and circumstances should lead this Court to conclude that all constitutional, federal law issues and the integrity of Court Officers brought forth in this motion for reconsideration should move this honorable court to grant jurisdiction.

Furthermore, the judgement should be reversed and remanded with instructions applicable to the facilitators and perpetrators of the Fraud.

C. Officers of the court

Our justice system relies upon officers of the court including judges and attorneys who have an obligation to promote justice and the effective operation of the judicial system.

When officers of the court engage in Fraud upon the court, ignore the authority and orders of the higher court, ignore constitution rights and fail to enforce Federal Law (as prevails in this case) this seriously affects the integrity of the normal process of adjudication.

Maintaining an effective judicial system is critical to the success of a democratic society and therefore close scrutiny by the Supreme Court is apropos.

D. Occurrence of new facts and circumstances

First, it is discovered and documented in writing that Shumaker is taking monies belonging to Ms. Stewart that directly violates the higher courts orders and is in violation of law and contract.

It is, after all, Shumaker that facilitated making RRL a dead entity on behalf of a new set of owners on December 31, 2018. *See* State of Ohio Certificate, Ohio Secretary of State, Jon Husted, 1658734, Document No(s): 201836501222 effective12/31/2018. However, not only did Shumaker withheld that information from the courts, they fraudulently presented it as a "name change only".

It was seven months after the killing of RRL that Shumaker placed RRL member Fritz Griffioen on the stand to testify "Firefly" was a name change only and the rebranding of IHT.

The "silent" merging out of existence of RRL by Shumaker required specific performance on contracts already certified in Tenth District Court of Appeals and Awarded to Ms. Stewart. These higher courts requirements, the law and contract were all ignored by Shumaker. Shumaker, in facilitating this merger out of existence, also failed to follow the laws of the State of Ohio in formally notifying all known creditors and possible creditors prior to making RRL a dead entity.

This required notification would have alerted the State to the known obligations of RRL and prevented the merger out of existence. Shumaker did not follow the law and presented a false picture to the court by claiming that this was a "name change only". This making of RRL a dead entity vanquished the RRL Federal Employer Identification Numbers ("FEIN") to a different FEIN for Firefly.

"Silence can only be equated with fraud when there is a legal and moral duty to speak or when an inquiry left unanswered would be intentionally misleading. We cannot condone this shocking conduct... If that is the case, we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately. ***U.S. v. Prudden*, 424 F.2d. 1021; *U.S. v. Tweel*, 550 F. 2d. 297, 299, 300 (1977)"**

Furthermore, in the direct defiance of the higher court, Shumaker created material alterations, a new set of documents and fraudulently present them by affidavit to the lower CPC as authentic. Then Shumaker repeated their fraud with their March 16, 2021 fraudulent statements made to the Tenth District Court of Appeals: "The reality is that the Closing Documents were form documents contained in the parties' Buy-Sell Agreement." *Id.* page 20 filed by Shumaker on 3/16/21 in 20AP493. This statement not only directly contradicts the "Shumaker" documents previously (prior to killing RRL) provided in the lower CPC, it is also in direct defiance and disregard of higher courts determination.

Tenth District Court of Appeals 18AP118, quoted order:

> "Therefore, it is ORDERED, ADJUDGED AND DECREED as follows: This Court hereby confirms the December 11, 2017 Final Award in American Arbitration Association Case No. 01-16-0003-9163 in all respects, pursuant to Ohio Rev. Code § 2711.09. The terms of the Final Award (filed with the Motion as Exhibit C) are specifically incorporated by reference into this Judgment Entry. The terms of the Final Award shall be binding on the parties." EMPHASIS.

Aside from the direct defiance of the higher court, there is also the denial of the principles of preclusion and Res Judicata, Shumaker fraudulently seeks a do-over and re-writing of an already certified award and contract and is aided and abetted by the lower court CPC Judge in this fraudulent endeavor.

The Certified contract specifically requires the total Award is paid in full if there is a merger out of existence and RRL does not survive. The Certified contract further states any subsequent

uncured default grants all membership shares as active share, with full rights including voting rights.

It was, after all, Shumaker who crafted a knowingly false affidavit, signed by RRL member Fritz Griffioen, that was uploaded to the lower CPC court and sent it to the Insurance Companies and the Police to halt investigations. This fraudulent affidavit claimed the unknowns (i.e., the embezzlement of $8 to $10 million) ware totally false. However, later, documented in writing and signed in meeting minutes, RRL and Shumaker admitted to the unknowns.

E. The Crime Report and the ensuing Whistleblower Retaliation by Officers of the Court

This case also demonstrates the failure of the Ohio courts to enforce the protections afforded by State and Federal Whistleblower Laws. Instead, the Ohio courts participated in silencing and punishing Ms. Stewart for her fulfillment of her duty to report documented and now proven criminal activity, witnessed first-hand while in a position as President of Firefly. When the first attempt to silence and punish Ms. Stewart was reverse by the higher courts, this same judge, along with Respondent's attorney, purported the crime reports as Vexatious Litigation so that Ms. Stewart could no longer appeal any decisions going forward. This was followed by a staunch refusal to abide by the higher courts order for a hearing on these very crime reports (the essence of this case).

These crimes were perpetrated upon Ms. Stewart and multiple collaborating victims and were originally reported to: The Columbus Police Department, The Ohio Civil Rights Commission, The Ohio Department of Insurance and Hartford and Liberty Mutual Insurance companies.

The Ohio Common Pleas Court ("CPC") judge applied sanctions and attorney fees for the fulfillment of Ms. Stewart's duty of reporting the White-Collar Crimes (the "crime reports").

The higher Appellate court disagreed with the CPC judge, and stated Judge Kim J Brown abused her discretion, "acted unreasonably, arbitrarily, or unconscionably", remanded for a hearing and vacated the finding and any award of sanctions and attorney fees associated with Appellant:

> Appeals Court quote: *Id.* ¶15. "An abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Claims of error by the trial court must be based on the trial court's actions, rather than on the magistrate's findings. "Therefore, we may reverse the trial court's adoption of the magistrate's decision only if the trial court acted unreasonably, arbitrarily, or unconscionably."

The reporting of White-Collar Crimes is not litigation. However, this very same CPC Judge granted a judgement of Vexatious Litigator against Ms. Stewart for these same crime reports.

In addition, the CPC Judge directly defied the higher court's order for a hearing on the crime reports, ignored the law and violated Ms. Stewart's constitutional rights and protections. This CPC Judge and Shumaker's implementation of the Ohio Vexatious Litigator Statute results in an unremovable derogatory branding of a citizen, forever and permanently. This is in direct conflict with the rights granted to all people by the Constitution of the United States. The guaranteed access to justice and the inalienable right to a hearing of the facts applies in all cases of law, civil and criminal.

F. Failure to enforce Federal laws or uphold the United States Constitution

Citizens must believe and trust the integrity of the Judiciary and be afforded the protections guaranteed by state and federal law when they fulfill their duty to report criminal activity. The Enforcement of Whistleblower protections is an essential component to the quality of justice which lies firmly in the hands of the Judiciary.

Ms. Stewart continues to endure multiple scorching tactics, including but not limited to: liable, slander, defamation, industry blacklisting, harassment, retaliation, threats, identity theft,

mail fraud, tax evasion, refusal to supply tax forms and years of non-payment of payroll taxes. In addition, she has not been afforded any opportunity to resolve her claims because the CPC Judge refused to lift the stay on this six-year-old case.

This refusal to open the docket for an opportunity of finality of all parties claims and defenses and refusal of access to the judiciary violates the protections as guaranteed under the Constitution. Even more concerning is the CPC judge, in concert of effort with Appellee's council, twice has inflicted harm upon Ms. Stewart fulfilling her duty to report the Crimes ongoing at Respondents' business.

When the Judiciary fails, as in this case, the likelihood of future Whistleblowers coming forward diminishes, as does justice. The Taxpayer First Act protects Appellant as a tax whistleblower against retaliation as does the United States Constitution and other State and Federal Whistleblower laws.

V. Conclusion

For the reasons set forth above, Appellant Merrilee Stewart prays this Court will accept jurisdiction and/or reversal and remand to an open docket and provide a referral to the Franklin County Ohio Prosecutor for criminal prosecution of all parties associated with the White-Collar Felonies.

Respectfully submitted,

/s/ Merrilee Stewart
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Pro See for Appellant Merrilee Stewart

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June 2021, this document was served via e-mail to James R. Carnes jcarnes@shumaker.com and Matthew T. Kemp mkemp@shumaker.com.

On this 17th day of June 2021, this document was also electronically filed via the Court's authorized electronic filing system which will send notifications of this filing to the following:

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Respectfully,
Merrilee Stewart

/s/ Merrilee Stewart

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Appendix A

The Supreme Court of Ohio's Jurisdiction Decline Entry of June 8, 2021 which cited Ohio S.Ct.Prac.R. 7.08(B)(4) as the reason is attached hereto as appendix A.

The Supreme Court of Ohio

RRL Holding Company of Ohio, LLC et al.,

v.

Merrilee Stewart

Case No. 2021-0385

ENTRY

Upon consideration of the jurisdictional memoranda filed in this case, the court declines to accept jurisdiction of the appeal pursuant to S.Ct.Prac.R. 7.08(B)(4).

(Franklin County Court of Appeals; No. 19AP-674)

Maureen O'Connor
Chief Justice

APPENDIX G

Appendix	Judgement Entry	Docket no.	Court ♦Pages 54-83
G	Pending	20-AP-493	Tenth District Court of Appeals Franklin County, Ohio
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al			
Description: On appeal from Franklin County Ohio Court of Common Pleas Civil Division, Case No. 15CV1842, Judge Kim J. Brown			
Status: Fully briefed as of March 26, 2021 Decision is pending			

IN THE TENTH DISTRICT COURT OF APPEALS
FRANKLIN COUNTY, OHIO

RRL HOLDING COMPANY
OHIO, LLC

Plaintiff-Appellee. Case No. 20-AP-493

v. REGULAR CALENDAR

MERRILEE STEWART, et al.

Defendants-Appellants

On Appeal from the Franklin County Court of Common Pleas

BRIEF OF APPELLANTS

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ASSIGNMENTS OF ERROR PRESENTED FOR REVIEW

Assignment of Error No. 1

In its Judgment Entry dated June 26, 2020, and in the Final Appealable Order dated August 26, 2020, the trial court committed reversible error by failing to consider the claims and defenses of Appellant TRG.

Assignment of Error No. 2

The trial court lacked jurisdiction to consider many of the substantive issues it adjudicated in the June 26, 2020 Judgment Entry and in the Final Appealable Order.

Assignment of Error No. 3

The trial court committed reversible error by ignoring or refusing to consider critical claims and defenses of Appellant Merrilee Stewart in the June 26, 2020 Judgment Entry and in the Final Appealable Order.

Assignment of Error No. 4

The trial court committed reversible error by refusing to conduct hearings as ordered by the Tenth District Court of Appeals.

Assignment of Error No. 5

The trial court committed reversible error in the June 26, 2020 Judgment Entry by ruling, pursuant to Civ.R 70, that Ms. Stewart was deemed to have executed the purported closing documents.

ISSUES PRESENTED FOR REVIEW

1. Whether the claims and defenses of TRG should have been addressed by the trial court.
2. Whether jurisdiction existed for the trial court to consider issues that remain pending in Case No. 19-AP-674.
3. Whether critical claims and defenses of Ms. Stewart should have been adjudicated by the trial court.
4. Whether hearings as ordered by the Tenth District Court of Appeals should have been held by the trial court.
5. Whether, pursuant to Civ.R 70, Ms. Stewart was deemed to have executed the purported closing documents.

STATEMENT OF THE CASE

Though this case initially involved the buying and selling of a membership interest in RRL Holding Company of Ohio, LLC ("RRL"), a company which wholly owned IHT Insurance Agency Group, LLC ("IHT"), this case is as much about Ms. Stewart's attempt to report suspected criminal activity she witnessed while in her position as President of IHT in 2013-2014 and the subsequent retaliation by her former business partners. Ms. Stewart believes this retaliation consisted of, among other things, being fired from IHT and on-going industry blacklisting, harassment, intimidation and defamation.

At the time the trial court entered its Final Appealable Order, there were several outstanding triable issues before the court, including Ms. Stewart's employment law claims, her whistleblower claims, TRG's claims and defenses, which have been stayed since November 10, 2015, jurisdictional issues that remain pending in the Tenth District Court of Appeals and the documents required to properly effectuate the membership interest. Further, Appellants remain in waiting for the hearing ordered by this Court in the January 23, 2020 Decision in 19AP202 (R.0F029, T47) relating to Ms. Stewart's reporting of suspected criminal activity. It was Ms. Stewart's reasonable expectation, that these issues would, in fact, be

litigated in the trial court. However, all that was decided by the trial court was an amortization schedule directing money to Appellee's law firm.

It is also a reasonable expectation that the false accusation that Ms. Stewart formed TRG to compete with Firefly be brought to a conclusion by the trial court. Though the record demonstrates that the Ohio Civil Rights Commissions concluded Ms. Stewart formed TRG, it found it was not formed to compete with Firefly. It has been more than five (5) years since the agreed order enjoining TRG to operate was signed. This open issue, which has been stayed for the entire five years, is crippling to the Appellants. Resolution is essential for all parties.

STATEMENT OF FACTS

The Judgment Entry from which Ms. Stewart and TRG appeal provides, in its entirety, as follows:

> Pursuant to this Court's June 26, 2020 Judgment Entry, this Final Judgment Entry sets forth the priority for payments to be made by Plaintiff Firefly Agency LLC (fka IHT Insurance Agency Group, LLC and successor-by-merger to RRL Holding Company of Ohio, LLC) ("Firefly"). As set forth in the amortization schedule attached as Exhibit A to this Judgment Entry, Firefly shall make 120 monthly payments in the amount of $5,081.39, based on an interest rate of 3.25%, beginning in July 2020, with the last payment in June 2030 (total payments of $609,767).
> Payments shall be applied in the following priority, as set forth in more detail in the payment schedule attached as Exhibit B:
> 1. Court fines in the total amount of $1,500. See Magistrate Decisions of August 15, 2019 and March 13, 2020.
> 2. Contempt penalties in the total amount of $41,800, paid to Firefly (calculated as $100/day from August 16, 2019 to March 13, 2020; and $200/day from March 14, 2020 to June 25, 2020). See Magistrate Decisions of August 15, 2019 and March 13, 2020.
>
> 3. Attorneys' fees in the total amount of $15,087.50, paid to Firefly. See Magistrate Decision of March 13, 2020.
>
> 4. The balance shall be paid to Stewart.
>
> Further, to aid in the enforcement of the arbitration ruling, Ms. Stewart hall [*sic*] provide all necessary payment instructions to Plaintiffs' counsel. If she fails to do so, Plaintiffs' counsel shall establish an individual, interest-bearing trust account payable to Ms. Stewart.
>
> IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just cause for delay and this Judgement Entry is final.
>
> ***THIS IS A FINAL APPEALABLE ORDER.***

IT IS SO ORDERED

Judgment Entry, August 26, 2020.

In the June 26, 2020 Judgment Entry, referenced in the August 26 Order, the trial court made several findings and issued multiple rulings, including "This Court has previously ruled Firefly is RRL' s successor-in- interest and that accurate statement of RRL's corporate status does not prevent Ms. Stewart from executing the Closing Documents. Likewise, the reference to the Remaining Members of Firefly is no obstacle to closing." Likewise, "Firefly's status as RRL' s successor-in-interest is no obstacle to Stewart signing the Closing Documents." (Judgment Entry, 6/26/20, p. 6)

The trial court rejected Ms. Stewart's contention that a conflict existed due to opposing counsel's representation of Griffioen Agency, LLC and RRL. Furthermore, the court ruled, if there was a conflict, she has failed to show how she could invoke the conflict since she was not a member or owner of either company. Also rejected was Ms. Stewart's argument that the Magistrate improperly denied her a continuance of the January 8, 2020 hearing for a medical emergency. The Court found this argument to be moot "because Stewart was permitted to offer evidence and make arguments at the February 28, 2020 hearing." Ms. Stewart's contention that the case was improperly stayed without discovery since November

10, 2015 was rejected since "the Court previously denied this argument (Entry filed Nov. 5, 2019), so it is precluded." (Id., p. 7)

Lastly, the trial court found that:

> Stewart fully understands she has been under Court order to execute the Closing Documents. Stewart has inexcusably and unjustifiably refused to comply. Therefore, pursuant to Civ.R. 70, Stewart is deemed to have signed and executed the Closing Documents that were provided and executed by the other parties at the February 28, 2020 hearing. The Closing Documents are deemed to have been fully executed on the date this Entry is filed with the Clerk of Courts.

Id., pp. 7-8.

Though this Court has likely developed some familiarity with the case, as it has it one form or another found itself here on multiple occasions, a brief summary of the facts leading up to the August 26, 2020 Entry may be helpful. Ms. Stewart was President of IHT in 2013-2014. (R.0C472, U40-V34). A dispute arose among the members of RRL regarding suspected at-risk business practices, such as the placement of supplier accounts into an unknown list, failing to pay the supplier, failing to sequester the accounts payable obligation and then distributing the money to the owners as fictitious profits. Ms. Stewart discussed this with the other members of RRL, to wit,. Fritz Griffioen, Bill Griffioen and Rod Mayhill. (R.0D941, R13).

On December 30, 2014 RRL stated they would purchase Ms. Stewart's shares for $520,000 and close on or before for March 30, 2015 (R.0E797, S52). However, instead of purchasing Ms. Stewart's shares, Appellees filed the within lawsuit. (R.0C354, P54) Appellees alleged that Ms. Stewart was a thief when she processed equal member distributions totaling $19,009.44; however, as determined by the arbitration panel, this accusation was proven to be false. The purported reason given by Appellees for Ms. Stewart's removal was that TRG was formed by Ms. Stewart to compete with IHT. This allegation has not been proven and awaits adjudication. The case filed on March 2, 2015 has been stayed for over five years, since November 10, 2015. (R.0C765, B20-B27).

On November 10, 2015, the Court granted in part Plaintiffs' RRL and IHT Motion to Compel Arbitration. On August 10, 2016 Appellees filed a motion to show cause against Ms. Stewart alleging a violation of the Agreed Entry of May 28, 2015 when she filed a civil rights complaint, a police report and the two insurance claims. Appellees delayed filing for arbitration until September 12, 2016 (R.0E797, T93) and only after Ms. Stewart filed a motion to compel arbitration. The only claim made by Appellees in arbitration was the allegation Ms. Stewart breached her fiduciary duties in the purported theft of money. (R.0E797, T93-T98)

The resulting arbitration award of December 11, 2017 confirmed that Ms. Stewart did not steal money and was in fact entitled to the equal distributions until the required closing date of March 30, 2015 pursuant to the Buy/Sell Agreement and the executed withdrawals of two previous members. (R.0E797, U52). The Arbitration Award of December 8, 2018 was received by all parties on December 11, 2017 (R.0D941, R13).

Ms. Stewart first attempted to have the trial court define closing terms of the RRL Arbitration Award with the January 1, 2018 filing of her objection and motions to confirm the arbitration award with motion to modify, vacate or correct in part, request for stay and request for hearing. (R.0D956, M55) However, this motion was not ruled on by the trial court and no hearing was granted. On February 5, 2018 the trial court confirmed the award. (R.0E003, D23)

The first set of closing documents were received on February 9, 2018 but were not dated, without any interest rate, with a 13-year payout (instead of 10), including an additional two-year non-compete on top of the over two years already served and conditioned the closing on non-party benefits. See January 2018 first set of closing documents (R. 0E797, T7), conditions for closing to benefit non-parties (R.0E797, T99) and the preliminary agreed entry of May 28, 2015 with a non-compete (R.0C519, J60). On July 9, 2019 a hearing was held, in which a

possible jurisdictional issue was identified by Magistrate Cordle. Appellees did not respond to the question of jurisdiction; Ms. Stewart asserted that jurisdiction was properly in the Tenth District Court of Appeals. (R.0E756, C88, § I)

Appellees filed a motion to show cause on January 11, 2019 regarding a Hartford insurance claim and whether Ms. Stewart's claim report violated the Agreed entry of May 28, 2015. See Motion to show cause (R.0E481, W63) and Agreed Entry. (R.0C519, J60) Ms. Stewart responded on January 27, 2019 (R.0E504, M51) with a memo contra to Appellees motion to show cause and a motion for sanctions. This issue of whether filing a claim with Hartford was a violation of the Agreed Entry was placed into the hands of tis Court on April 9, 2019 in case no. 19AP202.

Ms. Stewart subsequently made attempts to close with RRL on April 8, 2019 (R.0E797, T89). See set of Executable Closing Documents sent April 8, 2019 with 3 suggested closing dates of April 23, 24 or 25, 2019 (Id. R.0E797, T31-T61)

In spite of the jurisdictional issues, the Magistrate held the hearing on this show cause motion. The hearing took place on July 9, 2019 (R.0F229, H02, 183 pages) on Appellees' motions for show-case of: 1) March 7, 2018 RRL Final Arbitration Award closing (R.0E047, P94), supplemented on October 12, 2018 (R.0E365, 097), and 2) January 11, 2019 regarding Hartford insurance claim,

whether Ms. Stewart's claim report violated the Agreed entry of May 28, 2015. See motion (R.0E481, W63) and Agreed Entry (R.0C519, J60). At the July 9, 2019 hearing the "possible" jurisdiction issue was brought up by the Magistrate regarding 19AP202 and briefed by both parties. Ms. Stewart submitted her jurisdictional brief on July 16, 2019 (R.0E756, C88). The Magistrate entered her decision on August 15, 2019 (R.0E802, I37) and Ms. Stewart objected on September 4, 2019 with a request to supplement (R.0E827, J18).

Finally, after the August 2019 discovery that RRL was a dead entity, Ms. Stewart once again attempting to close pursuant to the Agreement. (R.0E827, J50) September 5, 2019 offer to close under the terms of the Buy/Sell Agreement. (R.0E988, O34) Judge Brown entered a judgment entry on September 4, 2019; however, she did not consider and never ruled on the question of jurisdiction. (R.0E827, B60)

In addition, on September 5, 2019 Ms. Stewart filed a motion to Stay pending Arbitration (R.0E828, R5) and Judge Brown denied the motion on September 9, 2019. Judge Brown's 9/4/2019 Final Judgment Entry and her 9/9/2019 denial of Ms. Stewarts motion to stay pending arbitration both were timely appealed in 19AP674 on October 4, 2019.

The preceding jurisdictional issue involved two final appealable entrees, timely appealed and docketed on October 4, 2019; Appellant believed this should have stopped the foregoing proceedings resulting in entries on June 26, 2020 (R.0F166, H95) and the August 26, 2020 (R.0F220, S38) that are subject of this appeal.

At issue in case no. 19AP674, among other things, was the August 2019 discovery that RRL was merged into Firefly on December 31, 2018, which was not known by the courts or Appellants at the July 9, 2019 hearing. Appellants asserted that this event triggered and altered the terms involving all unredeemed shares in accordance with the RRL Buy/Sell Agreement.

The 19AP674 appeal was initially dismissed on January 21, 2020. (R.0F025, H33) However, on February 3, 2020 Ms. Stewart timely filed a Motion for Reconsideration with the Tenth District Court of Appeals. This was pending and not ruled on until February 8, 2021.

The Final Appealable Order entered on September 4, 2019, one of the bases of the August 26, 2020 Final Appealable Order, also remained under the jurisdiction of the Tenth District Court of Appeals in AP674 from the filing of October 4, 2019 through February 9, 2021 and will be timely appealed to the Supreme Court of Ohio.

Despite being under appeal in 19AP674, another hearing took place on January 8, 2020 (R.0F272 - A98). Ms. Stewart sought leave for continuance for good cause (R.0F015, R9 & R.0F002, U35) (see also R.0E994 - V8, V15 & V16) and subsequently had a medical emergency and was unable to attend the January 8, 2020 hearing (R.0F015, R9 & R. 0F002, U55).

In is January 23, 2020 Decision, this Court held in Case No. 19-AP-202 that Judge Brown abused her discretion, "acted unreasonably, arbitrarily, or unconscionably" and the case was remanded for a hearing and vacated the finding and any award of sanctions and attorney fees associated with Appellants' white collar crime reports filed against Firefly to the Columbus Police, The Ohio Civil Rights Commission and Hartford and Liberty Mutual Insurance.

The case was remanded to the trial court for a hearing and on remand, the trial court "shall vacate that finding and any award of sanctions or attorney fees pertaining thereto". However, Ms. Stewart has yet to be afforded the hearing ordered.

Another hearing took place on February 28, 2020 even though, pursuant to both the September 4, 2019 Judgment and the September 9, 2019 Stay Pending Arbitration ruling, jurisdiction rested with the Tenth District Court of Appeals in 19AP674. On March 13, 2020 Magistrate Cordle made a Decision (R.0F083, P66-

P81). On May 6, 2020 Ms. Stewart's Objected to Magistrate's Decision (R.0F128, A1, § F.3.) and included a question regarding jurisdiction: "§F.3. Pending Tenth District Court of Appeals Jurisdictional Decision: Defendant appealed the Denying of her motion of September 5, 2019 to stay (ruled upon on by trial court Judge Kim Brown on September 9, 2019). This appeal remains pending."

On May 29, 2020 Ms. Stewart replied to the memo contra to Plaintiffs' Objection to Magistrates Decision (R.0F128, A1, § F.3.) Ms. Stewart noted her appeal of the denial of her motion of September 5, 2019 "to stay pending arbitration (ruled upon on by Judge Brown on September 9, 2019). As of December 23, 2019, this appeal was fully briefed...the trial court ignored the motion and held the hearing." (§ VIII, p. 24) Ms. Stewart also asserted that Firefly was not the proper entity to effectuate the transfer and that the documents presented by Firefly to the court were altered and/or fabricated, citing **West v. Household Life Ins. Co., 170 Ohio App.3d 463,469, 2007-Ohio-845 (10th Dist. 2007)** and **Michael's Finer Meats, LLC v. Alfery, 649 F.Supp.2d (S.D. Ohio 2009).**

SUMMARY OF ARGUMENT

As set forth above, this case concerns Ms. Stewart's attempt to report suspected criminal activity she witnessed while in her position as President of IHT in 2013-2014 and the subsequent retaliation by her former business partners. Ms. Stewart believes she was fired improperly from IHT and has been defamed and otherwise mistreated by these individuals,

At the time the trial court entered its Final Appealable Order, there were several outstanding triable issues before the court, including Ms. Stewart's employment law claims, her whistleblower claims, TRG's claims and defenses, which have been stayed since November 10, 2015, jurisdictional issues that remain pending in the Tenth District Court of Appeals and the documents required to properly effectuate the transfer of the membership interest. Further, Appellants await the hearing ordered by this Court in the January 23, 2020 Decision in 19AP202 (R.0F029, T47) relating to Ms. Stewart's reporting of suspected criminal activity. It was Ms. Stewart's reasonable expectation, that these issues would, in fact, be litigated in the trial court. However, all that was decided by the trial court was an amortization schedule directing money to Appellees' law firm.

It is also a reasonable expectation that the false accusation that Ms. Stewart formed TRG to compete with Firefly be brought to a conclusion by the trial court.

Though the record demonstrates that the Ohio Civil Rights Commissions concluded Ms. Stewart formed TRG, it found it was not formed to compete with Firefly. It has been more than five (5) years since the agreed order enjoining TRG to operate was signed. This undecided issue, which has been stayed for the entire five years, has been crippling to the Appellants.

ARGUMENT

I. Assignment of Error # 1: The trial court failed to consider the claims and defenses of TRG

As noted above, the August 26, 2020 Entry fails to mention TRG, though TRG is a named party in the lawsuit. This was clear error by the trial court, as many issues involving TRG remain unresolved. Notably, the Entry implies a continuation of a non-compete and non-solicitation agreement that conceivably binds both Ms. Stewart and TRG. Agreed Entry, filed May 28, 2015. TRG continues to be bound by this agreement, which by its very existence is destructive to its business.

Second, the Entry affects TRG in that it does not resolve whether a claim submitted to the Hartford was a violation of the Agreed Entry. This claim, which was presented by Appellees in the trial court special proceeding, has not been resolved but applies to both Appellants as the May 28, 2015 Agreed Entry includes TRG.

Third, the Entry affects TRG as it fails to bring issues to finality involving counterclaims brought by Appellants, including TRG. These claims have been stayed pursuant to the trial court's order entered on November 10, 2015 and remain unresolved. See Decision and Entry, attached hereto as Exhibit "B."

The preceding examples represent a non-exhaustive list of the ways in which the Entry directly or indirectly affects TRG. The trial court's refusal to consider the claims and defends of TRG was an abuse of discretion; it was "unreasonable, arbitrary, or unconscionable." **Blakemore v. Blakemore, 5 Ohio St.3d 217, 219 (1983)**. Accordingly, the case should be remanded to the trial court so allow TRG's claims to be heard.

II. Assignment of Error # 2: The trial court lacked jurisdiction to consider many of the substantive issues it adjudicated in the June 26, 2020 and August 26, 2020 Entries

The 19AP674 appeal was initially dismissed on January 21, 2020. (R.0F025, H33) However, on February 3, 2020, Ms. Stewart timely filed a Motion for Reconsideration with the Tenth District Court of Appeals. (R.0A394, G90) Ms. Stewart asserted this fact to the trial court, arguing that jurisdiction was not proper pending the ruling on the motion. (R.0F128, A1) This motion remained pending until February 8, 2021, when the Tenth District Court of Appeals denied the motion. (R.0A439, H80)

Ms. Stewart intends to appeal the denial of that motion to the Ohio Supreme Court. Moreover, for purposes of the trial court's jurisdiction, Appellants believe that from the time Ms. Stewart filed the motion for reconsideration, until February 8, 2021, this Court held exclusive jurisdiction over the case. **See, e.g., Sherlin v.**

Place Theatre, 1992 Ohio App. LEXIS 2222, at *3 (Ct. App. 1992) ("following a timely motion for reconsideration, this court retained jurisdiction over the case until we ruled on that motion. App. R. 26. Therefore, this court had exclusive jurisdiction over the case from February 4, 1991 through August 30, 1991. The trial court did not have jurisdiction to enter its August 20 judgment, ruling on the motion to amend the pleadings").

Accordingly, it is Appellants' belief that the trial court lacked jurisdiction to enter any enforceable orders beyond February 3, 2020, including, but not limited to the June 26, 2020 and August 26, 2020 entries. The jurisdictional issue was raised by Ms. Stewart in her May 6, 2020 Objection to Magistrate's Decision (R.0F128, A1, § F.3.): "§F.3. Pending Tenth District Court of Appeals Jurisdictional Decision: Defendant appealed the Denying of her motion of September 5, 2019 to stay (ruled upon on by trial court Judge Kim Brown on September 9, 2019). This appeal remains pending."

III. Assignment of Error # 3: The trial court failed to consider critical claims and defenses of Ms. Stewart in the June 26, 2020 and August 26, 2020 Entries

Ms. Stewart awaits the opportunity to resolve her employment law claims related to the Equal Employment Opportunity Commission right to sue stemming from the Ohio Civil Rights Commission ("OCRC") Complaint, whistleblower

claims and identity theft claim. The June 10, 2015 OCRC complaint and the subsequent March 1, 2017 OCRC Whistleblower Retaliation claim contain federal charges as is coded with both case numbers beginning with 22A (See R.0D822, I73). This code number confirms it was filed with both OCRC and the U. S. Equal Employment Opportunity Commission ("EEOC"). These charges were submitted to the trial court and remain open, unresolved, stayed and should have been heard as was ordered by the Tenth District Court of Appeals January 23, 2020 19AP202 (R.0F029, T47).

Ms. Stewart also awaits the opportunity to resolve her identity theft claim and refusal of IHT to supply tax returns required by law which was the subject of testimony in the February 28, 2020 hearing, subsequently documented in the trial court record and report to Department of the Treasury - Internal Revenue Service on May 19, 2020 report No. 1545-2139, reporting as a victim of Identity Theft and the resulting alleged tax evasion and mail fraud purportedly committed by Appellees.

Appellant Ms. Stewart awaits the opportunity to resolve the state and federal whistleblower claims that continue to be ignored and not ruled upon. One occurrence alleged by Ms. Stewart was the September 16, 2019 letter written by Fritz Griffioen sent to industry business colleagues containing false, egregious and

defamatory information about Ms. Stewart. See May 29, 2020 Memo Contra to the Plaintiffs' response to Defendant's Objection and Motion to Set Aside the Magistrates Order of March 13, 2020, motion to set aside Magistrates Decision of January 14, 2020. (R.0F141, W17, §B (ii)

As mentioned above, Appellant TRG's claims and defenses have been stayed since November 10, 2015. Ms. Stewart was accused of starting TRG to compete with Appellees and being frequently absent from work. These allegations are related directly to her firing at Firefly and not related to the buying or selling of membership interest in RRL. None of these claims or defenses have been litigated.

The Preliminary Agreed Entry of May 28, 2015 affecting both Appellants remains unsettled. The indefinite continuation of this preliminary agreed entry including a non-compete and non-solicitation agreement that binds both Appellants Ms. Stewart and TRG United is harmful to the Appellants' businesses and needs to be resolved.

The order for the sanction amounts consistent with the Magistrate's August 15 decision was ignored and not decided in the August 26, 2020 Entry with regard to the Hartford insurance claim. The August 15 Magistrate's Decision included sanctions for the purported second time with filing a Hartford insurance claim alleging a violation of agreed order of May 28, 2015. However, the Tenth District

Court of Appeals disagreed on the first sanction for filing the claim, reversed and remanded for a hearing. Yet, the final appealable order makes no mention of the Hartford claim or sanctions.

The final appealable order, consisting of a promissory note with amortization, calls for other documents that are missing from the order. Specifically, there are five required documents to complete a purchase of share under §7 of the RRL Buy/Sell Agreement. These documents were uploaded on May 4, 2015 to the court docket. See RRL Buy/Sell Agreement R.0C472, U76 to V4) and the subsequent closing documents in the record. R.0C472, V5. These are: 1) Member Interest Redemption Agreement (R.0C472, V5); 2) Promissory Note (R.0C472, V15); 3) Non-Compete (R.0C472, V19); 4) Certificate of Agreed Value; and 5) Redeemed Unit Pledge Agreement (R.0C472, V27).

IV. Assignment of Error # 4: The trial court committed reversible error by refusing to conduct hearings as ordered by the Tenth District Court of Appeals

Appellants are waiting for the hearing ordered by the Tenth District Court of Appeals in the 19AP202 Decision of January 23, 2020, trial court record R.0F028, J78 and Judgment Entry R.0F029 relating to Ms. Stewart's reporting of suspected White-Collar Criminal Activity. This hearing includes the review of the White-Collar Crime reports relating to Appellees' business practices contained in the

following reports 1) Columbus Police Report, 2) the Ohio Civil Rights Complaint and 3) Hartford and Liberty insurance claims. All of reports contain essential issues relating to the unresolved claims and defenses of Appellants when the stay order of November 10, 2015 is lifted.

V. Assignment of Error # 5: The trial court committed reversible error by ruling, pursuant to Civ.R 70, that Ms. Stewart was deemed to have executed the purported closing documents

In the August 26, 2020 Entry, the trial court stated:

> Stewart fully understands she has been under Court order to execute the Closing Documents. ***Stewart has inexcusably and unjustifiably refused to comply***. Therefore, pursuant to Civ.R. 70, Stewart is deemed to have signed and executed the Closing Documents that were provided and executed by the other parties at the February 28, 2020 hearing. The Closing Documents are deemed to have been fully executed on the date this Entry is filed with the Clerk of Courts.

(cite) (emphasis added)

Civ. R. 70 provides, in pertinent part:

> If a judgment directs a party to execute a conveyance of land, * * * to deliver deeds or other documents, or to perform any other specific act, and the party fails to comply within the time specified, the court may, where necessary, direct the act to be done at the cost of the disobedient party by some other person appointed by the court, and the act when so done has like effect as if done by the party. On application of the party entitled to performance, the clerk shall issue a writ of attachment against the property of the disobedient party to compel obedience to the judgment. The court may also in proper cases adjudge the party in contempt.

Millhon v. Millhon, 1987 Ohio App. LEXIS 9311 (Ct. App. 1987); Freeman v. Freeman, 1997 Ohio App. LEXIS 5722 (Ct. App. 1997).

Appellants submit that the trial court's findings regarding Ms. Stewart's state of mind and her reluctance to sign the documents presented to her are grossly inaccurate and constitute an abuse of discretion. While Ms. Stewart understood that the trial court and Appellees tried to force her to sign purported "closing" documents against her will, she sincerely and in good faith believed doing so would have been violative of the Buy/Sell Agreement and/or Ohio law. As set forth above and throughout this litigation, Ms. Stewart had multiple reasons to resist executing the documents.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully request that the August 26, 2020 Judgment Entry be reversed and that this case be remanded to the trial court so that several outstanding triable issues, including Ms. Stewart's employment law claims, her whistleblower claims, TRG's claims and defenses, which have been stayed since November 10, 2015, can be heard. Further, Appellants remain in waiting for the hearing ordered by this Court in the January 23, 2020 Decision in 19AP202 relating to Ms. Stewart's reporting of suspected

criminal activity. It was Ms. Stewart's reasonable expectation, that these issues would, in fact, be litigated in the trial court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on February 24, 2021 a copy of the foregoing was electronically filed. Notice of this filing will be sent to all parties listed below by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Todd A. Brenner
Todd A. Brenner

APPENDIX H

Appendix	Judgement Entry	Docket no.	Court •Pages 84-124
H	Decided & filed: 01/23/2020	19AP202	Tenth District Court of Appeals Franklin County, Ohio
Case Caption: RRL Holding Company of Ohio LLC, et al v. Merrilee Stewart, et al			
Description: Decision "On remand, the trial court shall vacate that finding and any award of sanctions or attorney fees pertaining thereto."			
Status: Franklin County, Ohio Common Pleas Court Judge Kim J. Brown refuses to hold the hearing as was ordered by the higher court. Case No. 15CV1842			

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

RRL Holding Company of Ohio, LLC et al.,	:	
Plaintiffs-Appellees,	:	
v.	:	No. 19AP-202 (C.P.C. No. 15CV-1842)
Merrilee Stewart,	:	(REGULAR CALENDAR)
Defendant-Appellant,	:	
TRG United Insurance, LLC,	:	
Defendant-Appellee.	:	

D E C I S I O N

Rendered on January 23, 2020

On brief: *Shumaker, Loop & Kendrick, LLP, James R. Carnes,* and *Matthew T. Kemp,* for appellees. **Argued:** *Matthew T. Kemp.*

On brief: *Merrilee Stewart,* pro se. **Argued:** *Merrilee Stewart.*

APPEAL from the Franklin County Court of Common Pleas

DORRIAN, J.

{¶ 1} Defendant-appellant, Merrilee Stewart, has filed this appeal of the March 15, 2019 decision and entry of the Franklin County Court of Common Pleas overruling appellant's objections to the magistrate's decision of December 21, 2018 and denying appellant's motion for sanctions on Fritz W. Griffioen and Attorney James R. Carnes, Esq., and adopting the same magistrate's decision. The notice of appeal addresses as well the court's May 17, 2017 decision and entry overruling appellant's objections to the magistrate's decision of February 13, 2017 and adopting the same magistrate's decision. These decisions originate from the court's November 7, 2016 decision and entry. The November 7, 2016

decision and entry and the May 17, 2017 decision and entry are now final and appealable with the filing of the March 15, 2019 decision and entry. With these decisions, upon the August 10, 2016 motion to show cause filed by plaintiffs-appellees RRL Holding Company of Ohio, LLC ("RRL") and IHT Insurance Agency Group, LLC ("IHT") (collectively "appellees"), the court found appellant to be in contempt of court and imposed sanctions and attorney fees for the same. For the following reasons, we reverse in part, render moot in part, and remand with instructions.

I. Facts and Procedural History

A. Context of Appeal

{¶ 2} The context of this appeal involves a dispute between the members of a limited liability company, RRL.[1] RRL wholly owned and was the sole member of IHT.[2] Appellant is listed as one of five members of RRL, each owning equal shares, named in amendments to the operating agreement of RRL ("Operating Agreement") and in a September 5, 2012 buy/sell agreement of RRL ("Buy/Sell Agreement"), along with William Griffioen, Fritz Griffioen, and Rodney Mayhill (collectively "remaining members") and Norman L. Fountain.[3] Whether appellant remains a member and owner of RRL is a subject of the dispute. Until the dispute between the members of RRL arose, the members also served as officers and on the board of managers for IHT. In their complaint, appellees state that appellant served as an officer of IHT until October 2014 and on IHT's board of managers until December 20, 2014.

{¶ 3} On March 2, 2015, appellees filed a complaint against appellant alleging she had formed a new company, TRG United Insurance, LLC ("TRG"), which operated in violation of a non-compete provision included in the Buy/Sell Agreement. The complaint further alleged that TRG was using as its headquarters the same address as IHT and the resources and staff of IHT to operate TRG. In October 2014, the remaining members voted

[1] Appellees informed the court that, in December 2018, RRL merged with Firefly Insurance Agency ("Firefly") and that Firefly is the successor to RRL. For purposes of this appeal, however, we will refer to RRL, rather than Firefly, to reflect the name of the entity during the period of time relevant to this appeal.

[2] Appellees informed the court that IHT is now known as Firefly. For purposes of this appeal, however, we will refer to IHT, rather than Firefly, to reflect the name of the entity during the period of time relevant to this appeal.

[3] Fountain subsequently redeemed his membership interest and is no longer a member of RRL.

to suspend appellant from her position with IHT and, in December 2014, the remaining members and appellant attempted to negotiate redemption of appellant's interest in RRL pursuant to the Buy/Sell Agreement. On December 30, 2014, notice was provided to appellant that she had been removed from RRL and her relationship with IHT had been terminated. The complaint alleged breach of fiduciary duties, negligence, conversion, defamation/libel/slander, replevin, and requested a preliminary injunction. Appellees also filed a separate motion for preliminary injunction.

{¶ 4} Appellant moved to dismiss the complaint. Appellees amended their complaint on May 4, 2015, supplementing the general allegations and deleting the claims of negligence and defamation/libel/slander. The trial court denied appellant's motion to dismiss on May 28, 2015 finding the amended complaint had cured the deficiencies of the original complaint which appellant alleged in her motion.

{¶ 5} Appellant filed an answer and counterclaim to the amended complaint on May 18, 2015. In her counterclaim, appellant alleged the remaining members did not follow the requirements of the Operating Agreement and Buy/Sell Agreement to remove her as a member. She alleged several counts of breach of contract relating to the Operating Agreement, health insurance, commissions and life insurance, several counts of promissory estoppel relating to health insurance, commissions and life insurance, and one count of defamation. Appellant also filed a memorandum contra to the motion for preliminary injunction. Appellees filed a reply to the counterclaim on June 12, 2015.

{¶ 6} Relevant to this appeal, on May 28, 2015, the parties filed an agreed entry as to appellees' motion for preliminary injunction ("Agreed Entry"), and appellees withdrew their previously filed motion for preliminary injunction. The issues before this court today involve compliance with the Agreed Entry. The specific terms of the Agreed Entry will be discussed forthwith.

{¶ 7} On July 20, 2015, appellees moved to compel arbitration and stay litigation pursuant to the parties Buy/Sell Agreement. Appellant filed a memorandum contra on August 13, 2015. On November 10, 2015, the court ordered the parties submit their affirmative claims against each other and defenses to binding arbitration and stayed claims against TRG, including TRG's defenses pending resolution of the arbitration process.

B. Appellees' August 10, 2016 Motion to Show Cause

{¶ 8} On August 10, 2016, appellees filed one of numerous motions over the history of this case for an order to show cause as to why appellant should not be held in contempt of court for violating the terms of the Agreed Entry. The court's ruling on the August 10, 2016 motion to show cause is the narrow subject of this appeal.[4] As relevant here, the Agreed Entry provides:

> NON-AFFILIATION
>
> I. Defendants Stewart and TRG, agree to refrain from:
>
> a. representing to any person, business, or entity that Defendants are employees, agents, authorized representatives, producers, officers, managers or doing business as, or in any way working with or for, Plaintiffs IHT or RRL;
>
> b. making any representation that TRG is located at, or operating or doing business from IHT or RRL's offices at 6457 Reflections Drive, Dublin, OH 43017, or
>
> * * *
>
> d. representing to any person, business, or entity that Defendant Stewart has any authority to enter into any business arrangements, agreements, contracts, or transactions that in any way affects IHT or RRL.

(Agreed Entry at 2-3.)

{¶ 9} The Agreed Entry also provided for: (1) preservation of appellant's data and information from her IHT e-mail and telephone; (2) appellant refraining from accessing, transferring, moving, or changing any IHT financial account with any financial institution;

[4] Although in responding to the August 10, 2016 motion before the trial court, as well as in her briefing before this court, appellant argued the merits of her counterclaim and appellees' amended complaint, we decline to address the merits of the counterclaim and amended complaint as that was the subject of arbitration. Furthermore, we do not address the trial court's rulings also included in the March 15, 2019 decision and entry: (1) granting motion of appellees to show cause filed March 7, 2018, (2) denying appellant's motion to show cause filed March 20, 2018, (3) denying as moot appellant's motions to stay filed March 11, and October 26, 2018, (4) granting motion of appellees to show cause filed January 11, 2019, and (5) denying appellant's motion for sanctions on Fritz and Carnes filed January 27, 2019. Furthermore, as explained later in our discussion regarding the seventh assignment of error, parts (A) and (B), we decline to address the court's decision denying appellant's motion for sanctions filed September 18, 2017. The court denied this motion on December 12, 2017.

(3) appellant not engaging in solicitation for purposes of establishing business relationships to sell or provide any insurance coverage unless appellant was the identified producer while working at IHT and not sharing or using IHT's trade secrets or confidential business information; and (4) appellees agreeing to forward to appellant her mail and e-mail that is not related to IHT or RRL customers or business operations.

{¶ 10} Appellees claimed appellant violated the Agreed Entry by claiming to be an owner and authorized agent of IHT and RRL to: (1) the Ohio Civil Rights Commission ("civil rights commission"); (2) the Columbus Police Department ("police"); (3) Hartford Insurance ("Hartford"); and (4) Liberty Mutual Insurance ("Liberty") (collectively "insurance companies"). Appellant filed a memorandum contra claiming the Agreed Entry was moot "given the *dismissal* of this matter pending arbitration," and because "[t]his action is no longer pending with respect to the claims ordered to arbitration." (Emphasis added.) (Aug. 24, 2016 Memo. Contra at 3, 5.) In the alternative, appellant argued, assuming, arguendo, that the Agreed Entry is still in effect, she did not violate the spirit or intent of the Agreed Entry as it was intended to address business interests. Appellant argued her communications as alleged by appellees have nothing to do with the business associations and relationships between and among her and appellees. Specifically, appellant argued: (1) the claim of discrimination she filed with the civil rights commission is not in violation of the Agreed Entry and, if it were, that would preclude her from filing a counterclaim in the arbitration; (2) the report filed with police involved alleged embezzlement in the form of unpaid agent commissions which occurred between May 1, 2005 and May 1, 2015 before the Agreed Entry was entered and, therefore, explains that appellant was working with IHT at the time of the reported embezzlement; and (3) the claims filed with the insurance companies are not for the purposes of engaging in competition or engaging in a business transaction on behalf of appellees; rather, appellant is reporting her interest in appellee to support her allegations of embezzlement and fraudulent concealment in unpaid agent commissions. Appellees filed a reply memorandum.

C. Appellant's August 24, 2016 Motion to Show Cause and Request for Sanctions, and Appellees' Request for Sanctions and Attorney Fees for Having to Respond to the Same

{¶ 11} In addition to her memorandum contra appellees' August 10, 2016 motion to show cause, on August 24, 2016, appellant filed a motion to compel appellees to file arbitration and a motion to show cause why they should not be held in contempt for willfully failing to comply with the court's November 10, 2015 entry ordering the parties to submit their affirmative claims and defenses to binding arbitration. Appellant noted appellees moved for arbitration in the first place, and as of August 24, 2016 had not yet filed any proceeding with the American Arbitration Association ("AAA"). On August 31, 2016, appellees filed a memorandum contra which provided a detailed outline of appellees' efforts to comply with the order and begin the arbitration process. Appellees argued that appellant, her frequent changes in representation, and the inaction of her various attorneys were to blame for the delay. Appellees requested appellant be sanctioned and be required to pay attorney fees which appellees incurred in responding to the motion to compel arbitration. Appellant filed a reply arguing appellees did not pursue arbitration with AAA but, rather, proceeded as if they were only required to have the arbitration conducted pursuant to AAA rules. According to appellant, on August 2, 2016, appellees agreed to AAA arbitration and to file within the next week, but had neglected to file anything with AAA as of September 6, 2016. Appellant requested attorney fees incurred by her in filing the motion to compel arbitration. Appellees filed a supplemental memorandum in support of their request for sanctions stating they had agreed to AAA arbitration "despite there being no requirement to do so." (Footnote omitted.) (Oct. 21, 2016 Supp. Memo. in Support of Mot. for Sanctions at 2.) Appellees further stated they had submitted a demand for arbitration to AAA on September 8, 2016, that appellant's counsel indicated he would advise appellant to withdraw her motion to compel arbitration, and he would be in touch the following Monday. Appellees finally stated that appellant's counsel did not follow up and appellant did not withdraw her motion despite knowledge it was moot. Appellees again requested attorney fees.

{¶ 12} On October 27, 2016, appellant withdrew her motion to compel arbitration but did not withdraw her motion to show cause why appellees should not be held in contempt for failing to abide by the November 10, 2015 entry. Appellant also stated that appellees' initial demand for arbitration with AAA did not move forward because it was

deficient and it was not until October 11, 2016 that appellant received a notice from AAA that the filing requirements had been met.

D. The Magistrate's and Court's Rulings on Appellees' August 10, 2016 Motion to Compel; Appellant's August 24, 2016 Motion to Compel and Request for Sanctions; and Appellees' August 31, 2016 Request for Sanctions and Attorney Fees in Responding to Appellant's August 24, 2016 Motion to Compel

1. Court's initial finding of violation

{¶ 13} On November 7, 2016, the trial court filed a decision and entry: (1) granting appellees' motion to show cause why appellant should not be held in contempt for violating the Agreed Entry; (2) denying appellant's motion to compel arbitration and motion to show cause why appellees should not be held in contempt for violating the November 10, 2015 entry ordering arbitration;[5] and (3) granting appellees' motion for sanctions and attorney fees incurred in having to respond to appellant's motion to compel arbitration and motion to show cause.[6]

{¶ 14} The court first determined the Agreed Entry was not moot. The court then determined appellees' motion for an order to show cause why appellant should not be held in contempt was well-taken. The court agreed that appellant had violated the terms of the Agreed Entry as follows:

> The first alleged violation involves a claim and appeal which Stewart filed with the Ohio Civil Rights Commission. Exhibit A to Plaintiffs' motion is a Letter of Determination upon Reconsideration which sets forth Stewart's claim that she was treated unfairly by Plaintiff's as a result of her gender and religion. The Commission notes in its Letter: "Although her charge alleges that she was constructively discharged, she now denies this in her request for reconsideration, claiming that 'I am now and remain a member/owner' of Respondent [IHT].' " For the second violation, Plaintiffs cite to a report Stewart filed with the Columbus Police Department. (Motion, Ex. B). On July 27, 2016, Stewart reported that she, as a representative of IHT, was the victim of a $5-10 million embezzlement scheme orchestrated by IHT's human resources manager. Finally, as to

[5] Appellant does not address this ruling in her assignments of error and, therefore, we will not address the same.

[6] Appellant does not address this ruling in her assignments of error and, therefore, we will not address the same.

> the third and fourth violations, Plaintiffs submit a series of emails between Stewart and Plaintiffs' insurance carriers, in which Stewart seeks compensation for employee dishonesty through Plaintiffs insurance policies (Motion, Ex. C).
>
> The Court agrees that each of these actions violated the terms of the parties' May 28, 2015 Agreed Entry.

(Nov. 7, 2016 Decision & Entry at 4-5.)

{¶ 15} Next, the trial court considered the timeline presented by appellees regarding their efforts to begin the arbitration process and noted appellant did not dispute the same. The court concluded: (1) appellees had been attempting for many months to pursue arbitration and that appellant was in fact the dilatory party, and (2) the parties Buy/Sell Agreement did not require the parties to request arbitration through AAA. The trial court accordingly denied appellant's August 24, 2016 motion to compel and request for sanctions. It also found to be well-taken appellees' request for sanctions against appellant and her counsel and for attorney fees incurred in having to respond to appellant's motion to compel and motion to show cause. The court noted appellees agreed to AAA arbitration despite no contractual obligation to do so and that appellant and her counsel never withdrew the motion to compel even though counsel indicated he would advise appellant to withdraw the motion.

{¶ 16} Finally, the court referred appellees' motion to show cause to a magistrate and ordered appellant to appear and show cause why she should not be held in contempt of court for violating the Agreed Entry as appellees alleged in their August 10, 2016 motion. The court indicated that at the show cause hearing it would consider the appropriate sanctions against appellant for the filing of the motion to compel arbitration and motion to show cause.

2. Magistrate's February 8, 2017 hearing, February 13, 2017 decision, and trial court's May 17, 2017 overruling of objections and adopting the magistrate's decision

{¶ 17} On February 8, 2017, the magistrate held a show cause hearing. On February 13, 2017, the magistrate filed a decision recommending appellant be held in contempt of court and that sanctions be imposed. The magistrate found as follows: (1) the civil rights commission dismissed appellant's claim based on appellant's statement that "I

am now and remain a member/owner of IHT," appellant denied she made that statement, and the magistrate found the denial to be unavailing as appellant had been sent a copy of the civil rights commission's dismissal letter based on the same statement and she did nothing to object to the civil rights commission's assertion (Feb. 13, 2017 Mag. Decision at 1.); (2) the police report listed IHT and IHT's address as the victim of alleged embezzlement, appellant claimed the officer taking the report erroneously entered IHT as the victim and that she had not seen the report, and the magistrate found appellant's explanation as not worthy of belief as appellant did nothing to clear up the error, gave the police report number to a Columbus Dispatch reporter, and a person claiming to be a victim of $5-10 million dollars would have followed-up with police to see how the claim was progressing; (3) appellant claimed she filed claims with the insurance companies on the advice of counsel, however, the attorney upon whose advice appellant claimed to have relied did not appear at the hearing, and the magistrate found that reliance on the erroneous advice of counsel is not an excuse for violating the Agreed Entry; and (4) appellant has not demonstrated sufficient factual or legal reasons why she should not be held in contempt of court for her actions. The magistrate recommended that appellant should be allowed to purge her contempt by compensating appellees for the legal fees incurred in prosecuting the contempt action.[7]

{¶ 18} Appellant filed the following objections to the magistrate's decision on February 27, 2017: (1) the Agreed Entry does not prohibit appellant from representing herself as a "member" or "owner" and whether she is a "member" or "owner" is the subject of adjudication in the arbitration; (2) appellant did not violate the spirit of the Agreed Entry which is to prohibit appellant from holding herself out to third parties as having authority to transact the business of RRL or IHT; (3) the court was required to hold a hearing pursuant to R.C. 2705.02(A); (4) prior to adjudicating appellant to be in contempt of court in its November 7, 2016 entry, the court erred in not permitting appellant to present evidence or argument or to rebut the court's preliminary adjudication of contempt; (5) the magistrate's determination that appellant's claim before the civil rights commission violated the Agreed Entry was in error because: (a) the civil rights commission's letter of

[7] The magistrate did not address at this time the sanction or amount of attorney fees appellant should pay to appellees for their time in having to respond to appellant's August 24, 2016 motion to compel and show cause.

determination upon reconsideration was the only evidence presented and it was impermissible hearsay per Evid.R. 801 and 802; (b) no other evidence was presented that appellant made the representation she was a member or owner of RRL; (c) discrimination was the issue before the civil rights commission, not appellant's "membership" or "ownership" interest and, therefore, there was no reason to object to the civil rights commission's statement; and (d) appellant had exhausted her administrative remedy and thus could not object to the civil rights commission's statement other than to appeal; (6) the magistrate's determination that appellant listing IHT as the victim of embezzlement in the police report violated the Agreed Entry was in error because: (a) the only evidence was the unsigned police report; (b) appellant testified she verbally made the report and would not have provided IHT's address as her own; (c) appellant testified she was not given a copy of the police report and even if she had, the address seemed trivial as to whether an amended report was necessary; (d) the magistrate speculated as to whether a victim of embezzlement would follow-up to see how the case was progressing; and (e) appellant herself is the victim of embezzlement and she filed the report on her own behalf and not on behalf of IHT or RRL; and (7) the magistrate's determination that appellant's filing of two insurance claims alleging that she is an owner or member of RRL violated the Agreed Entry was in error because: (a) appellant testified she filed the insurance claims on her own behalf and not on behalf of IHT or RRL; (b) she filed the claims on the advice of counsel; and (c) appellant specifically informed Hartford in the July 20, 2016 e-mail that she is an "estranged member and owner of IHT/RRL." (Aug. 10, 2016 Appellees' Mot. to Show Cause, Ex. C, Apx. 2.)

{¶ 19} Appellees filed a response to the objections on March 9, 2017, a supplemental response to the objections, a motion for sanctions, and another motion to show cause on May 15, 2017.

{¶ 20} On May 17, 2017, the trial court overruled the objections and adopted the magistrate's decision. The court found that at the February 8, 2017 hearing before the magistrate, appellant, rather than show cause why she should not be held in contempt of court, sought to relitigate the terms of the parties Agreed Entry and the court's ruling that she had violated its terms. The court found that in its November 7, 2016 decision and entry it had determined appellees had met their initial burden to demonstrate by clear and convincing evidence that appellant had violated the Agreed Entry but then provided

appellant an opportunity to rebut appellees' initial showing. The court disagreed that appellant rebutted appellees' showing and found that "[appellant's] testimony was wholly implausible and belied by the documents presented at the hearing." (Nov. 7, 2016 Decision at 4.) As to the civil rights commission claim, the court found appellant's objection based on hearsay was not well-taken as it was not made at the time the civil rights commission's report was admitted, the report was a public record, and appellant's statement is the admission of a party-opponent. The court further agreed with the magistrate that appellant's position was unavailing. As to the filing of the police report, the court noted the report lists IHT as the victim and the victim type as a business, and further identifies appellant's employer as IHT and lists IHT's address as her employer's address. The court found to be, at best, wanting, appellant's explanations that she had not seen the report. As to the insurance company claims, the court noted appellant was an insurance professional and would have understood the insurance policies were for losses suffered by IHT and not for herself personally. The court found appellant's position that she did not realize she was holding herself out as a representative of IHT to not be credible. The court adopted the magistrate's decision recommending imposition of sanctions.[8] The court referred to the magistrate the determination of: (1) the appropriate sanctions for appellant's four separate violations of the Agreed Entry, including, but not limited to, legal fees expended by appellees in the prosecution of their motion to show cause dated August 10, 2016, as well as (2) the appropriate sanctions for appellant's failure to withdraw her frivolous motion to show cause dated August 24, 2016.[9]

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[8] In the same entry, the court considered appellees' new motions to show cause and for sanctions filed on March 9, and May 15, 2017. In the new motions, appellees alleged appellant lied under oath during the February 8, 2017 hearing before the magistrate regarding the August 10, 2016 motion to show cause. The court found the motions to be well-taken and referred to the magistrate the determination of whether appellant should be held in contempt for her false testimony at the February 8, 2017 hearing and, if so, the appropriate sanction. In the December 21, 2018 decision, the magistrate found that appellant failed to show cause why she should not be held in contempt for her false testimony and that as a direct and proximate result of this contempt, appellees had incurred reasonable and necessary attorney fees in the amount of $3,996. Without any specific discussions regarding the same, the trial court adopted the magistrate's decision in full on March 15, 2019. We do not address the court's findings regarding the March 9 and May 15, 2017 motions to show cause and for sanctions at this time as appellant did not address this in her brief before the court. We note, however, that appellant's September 18, 2017 notice may provide additional context to appellant's statements made at the February 8, 2017 hearing.

[9] Appellant does not address this ruling in her assignments of error and, therefore, we will not address the same.

{¶ 21} Appellant appealed the court's May 17, 2017 decision overruling her objections and adopting the magistrate's decision. On June 30, 2017, this court dismissed the appeal as sanctions had yet to be fully determined and we lacked jurisdiction to hear the appeal. *See RRL Holding Co. of Ohio, LLC v. Stewart*, 10th Dist. No. 17AP-410 (June 28, 2017), Journal Entry of Dismissal.

E. Arbitration

{¶ 22} On December 11, 2017, a three-member arbitration panel issued a final award granting appellees' claim for declaratory relief, ordering appellant to execute certain documents in furtherance of the finding that she was properly removed as a member of RRL; denying the balance of appellees' claims; and denying appellant's counterclaims in their entirety. Appellees filed a motion to confirm the arbitration award on December 18, 2017. Appellant objected and moved to modify, vacate, or correct in part the final award on January 1, 2018.[10] The trial court confirmed the award in all respects on February 5, 2018.[11] On February 15, 2018, appellant filed a notice of appeal of the trial court's February 5, 2018 order confirming the arbitration award. On September 28, 2018, this court affirmed the trial court's February 5, 2018 order. This court noted that appellant did not file a transcript and has not demonstrated a valid reason to vacate the arbitration award. *See RRL Holding Co. of Ohio, LLC v. Stewart*, 10th Dist. No. 18AP-118, 2018-Ohio-3956. Appellant appealed to the Supreme Court of Ohio. On December 26, 2018, the Supreme Court declined to accept jurisdiction of the appeal. (S.Ct. No. 2018-1618, *see* 2018-Ohio-5209.) On March 14, 2019, the Supreme Court denied appellant's motion for reconsideration of the same. (S.Ct. No. 2018-1618, *see* 2019-Ohio-769.)

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[10] On January 8, 2018, appellant also filed a notice of appeal from the trial court's November 10, 2015 entry granting in part appellees' motion to stay proceedings pending arbitration. Appellant argued the November 10, 2015 entry was now subject to appeal as the final arbitration award was issued December 11, 2017. On February 1, 2018, this court dismissed appellant's appeal as an order granting or denying a stay of trial pending arbitration is a final order subject to immediate appeal and therefore appellant's appeal of the same was untimely and must be dismissed for lack of jurisdiction. *RRL Holding Co. of Ohio, LLC v. Stewart*, 10th Dist. No. 18AP-27 (Feb. 1, 2018) (Journal Entry of Dismissal).

[11] On March 7, 2018, appellees filed a motion to show cause as to why appellant should not be held in contempt for failing and refusing to comply with the court's February 5, 2018 order confirming the final arbitration award by failing to execute documents within 30 days by January 10, 2018 as ordered by the court. As noted previously, in the March 15, 2019 decision and entry, the trial court found the March 7, 2017 motion to be well-taken and ordered that a hearing will be set for appellant to oppose and show cause why she should not be held in contempt.

F. September 18, 2017 Notice of Supplemental Information

{¶ 23} On September 18, 2017, a magistrate conducted a show cause hearing as directed by the trial court in its May 17, 2017 decision. Early in the morning on the same day as the hearing, appellant filed a notice of supplemental information and exhibits thereto for an evidentiary hearing of September 18, 2017 ("September 18, 2017 Notice") and motion for attorney sanctions ("sanctions motion"). Appellant stated therein that she was providing "newly acquired information" including, among other items: (1) the original 32-page complaint she filed with the civil rights commission; (2) a summary of a narrative appellant states she submitted to police; (3) documentation showing advice of counsel to update her insurance claims; (4) copies of e-mails of appellant's then-counsel indicating counsel's opinion that the injunction was no longer in effect; and (5) copies of e-mails between appellant and the insurance companies. In her conclusion, appellant moved the court "to consider this supplemental information." (Sanctions motion at 22.)

G. Magistrate's and Court's Ruling on Appellees' August 10, 2016 Motion for Show Cause, Attorney Fees, and Sanctions

{¶ 24} In her December 21, 2018 decision, the magistrate noted that the court's order of reference was to make the following determinations:

> a) The appropriate sanction(s) for [appellant's] four separate violations of the Agreed Entry, including but not limited to attorney fees expended by Plaintiffs in the prosecution of their August 10, 2016 show-cause motion;
>
> b) The appropriate sanction(s) for [appellant's] failure to withdraw her frivolous show-cause motion filed on August 24, 2016; and
>
> c) Whether [appellant] should be held in contempt for her false testimony at the hearing before [a Magistrate] on February 8, 2017, and if so, the appropriate sanction(s) for her contempt.

(Dec. 21, 2018 Magistrate's Decision at 5, ¶ 19.) The magistrate noted appellant appeared and testified at the hearing on September 18, 2017, and that she was not credible. The magistrate further noted appellees appeared and presented testimony of their attorney, Carnes, and the magistrate found Carnes to be very credible. The magistrate also found appellant attempted to relitigate at the hearing the court's prior determination that she had

violated the Agreed Entry on four separate occasions and she had provided false testimony on February 8, 2017. The magistrate found appellees presented credible evidence and argument to support an award of sanctions for appellant violating the Agreed Entry and for failure to withdraw her frivolous motion to compel arbitration and show cause, and that appellant presented no credible evidence or argument to challenge an award of sanctions or show cause why she should not be held in contempt. The magistrate found that as a direct and proximate result of four separate violations of the Agreed Entry and her failure to withdraw her motion to compel and motion to show cause, appellees incurred reasonable and necessary attorney fees in the amount of $18,068.08. The magistrate further found appellees incurred reasonable and necessary attorney fees in the amount of $2,130.00 and $2,840.00 as a direct and proximate result of appellant's eleventh-hour filing of her appeal on June 6, 2017, which resulted in cancellation of the previously scheduled June 7, 2017 magistrate hearing and having to prepare and participate in the hearing before the magistrate on September 18, 2017 respectively.

{¶ 25} The magistrate recommended that, pursuant to R.C. 2705.05, the court should impose the following fines upon appellant: $250, $500, $1,000 and $1,000 for appellant's first, second, third, and fourth violations of the Agreed Entry respectively. The magistrate further recommended that appellees are entitled to recover attorney fees in the total amount of $27,034.08[12] from appellant.

{¶ 26} On January 4, 2019, appellant filed objections to the magistrate's decision along with a motion for sanctions on Fritz and Carnes. In the objections, appellant provided her summary of background on appellant, appellees, arbitration, a federal case and other investigations involving the parties. Appellant complained the magistrate did not consider the supplemental information evidence appellant filed on September 18, 2017. The objections did not, however, address the magistrate's December 21, 2018 decision regarding the imposition of sanctions and attorney fees and the recommended sanction and attorney fee amounts. Rather, appellant's objections addressed the court's November 7,

[12] The magistrate also found appellant failed to show cause why she should not be held in contempt for her false testimony at the February 8, 2017 hearing and as a direct and proximate result of the same, appellees had incurred reasonable and necessary attorney fees in the amount of $3,996.00. Adding the $3,996.00 to the amounts noted above, the magistrate determined appellees had incurred reasonable and necessary attorney fees in the total amount of $27,034.08. *See* fn. 9.

2016 decision granting the motion to show cause and finding that appellant had violated the Agreed Entry and the magistrate's decision of February 13, 2017 and the trial court's adoption thereof on May 17, 2017. Appellant reiterated the objections and arguments which she made in her February 27, 2017 objections to the magistrate's February 13, 2017 decision. The objections also addressed the reasons for appellant's failing to execute the terms of the arbitration agreement—which is the subject of a different motion to show cause filed by appellees on March 7, 2018—not the subject of the magistrate's decision of December 21, 2018 or this appeal. Finally, appellant asked the trial court to impose sanctions on Fritz and Carnes. Appellant did not file a transcript with her objections. Appellees filed a response.

{¶ 27} On March 15, 2019, the trial court overruled appellant's objections and adopted the magistrate's December 21, 2018 decision. The court noted appellant's objections again sought to relitigate the court's prior rulings and were not an objection to the appropriateness of the sanctions or to the amount. The court summarily concluded that appellant's objections were without merit and adopted the magistrate's December 21, 2018 decision.

{¶ 28} On April 8, 2019, appellant filed a notice of appeal. Consistent with her repeated efforts to address the findings in the court's November 7, 2016 decision and entry, the magistrate's decision of February 13, 2017 and the court's adoption of the same on May 17, 2017, appellant noted in her notice of appeal that "[t]his appeal is derived from the original decision and entry of May 17, 2017, however because the issue of sanctions had yet to be fully determined, the May 17, 2017 decision and entry did not constitute a final appealable order." Accordingly, appellant's assignments of error address the findings in the November 7, 2016 decision and entry, the February 13, 2017 magistrate's decision, May 17, 2017 decision and entry, the December 21, 2018 magistrate's decision, and the March 15, 2019 decision and entry to the extent they address the findings of four violations of the Agreed Entry and the imposition of sanctions and attorney fees for the same, as well as her repeated rejected efforts to move the court to reconsider the same. We limit our analysis accordingly.

II. Assignments of Error

{¶ 29} Appellant appealed and assigns the following seven assignments of error for our review:

> [I.] The courts enforcement of an agreed upon Preliminary Injunction *compels Appellate to lie* to the investigative authorities and conceal criminal activity which violates the constitution rights of the Appellate and promotes the obstruction of justice.
>
> [II.] The courts *levy of sanctions for the protected activity of reporting a crime is adverse action* which violates state and federal laws designed to protect the whistleblower, Appellant Merrilee Stewart.
>
> [III.] The courts judgement erred in the facts, *without hearing or consideration of the reliable, substantial evidence contained in the supplemental documentation* and thus made judgement on hearsay documents of others and a perjured affidavit which violates the due process rights of the Appellate and Ohio Rule of Evidence 803.
>
> [IV.] The courts erred in the enforcement of a four-year-old agreed upon preliminary injunction with no emergent status because *all claims were sent to the jurisdiction of Arbitration and cases should not be split, wherefore relief sought, including equitable and/or preserving the status quo belong in Arbitration* pursuant to the FAA, the Supreme Court and case law.
>
> [V.] The court *erred judgment of the attorney fees to the RRL attorney because as an unredeemed owner in RRL Defendant Appellate Merrilee Stewart is already paying a proportionate amount of the attorney fees from the profits of RRL,* which violates the principles of promissory and judicial estoppel.
>
> [VI.] The actions of Defendant-Appellate were *on the advice of counsel and therefore she acted in good faith with no wrongful intent.* Any sanctions rendered are prejudicial, unjustified and misdirected.
>
> [VII.] The trial court erred in not granting the Appellant's *request for a hearing on supplement information and attorney misconduct relating directly to the same set of facts and circumstances,* in violation of the due process clause of

> the Fifth and Fourteenth Amendments to the United States Constitution.

(Sic passim.) (Emphasis sic.)

III. Standard of Review

{¶ 30} An appellate court will not reverse a trial court's finding of contempt, including the imposition of penalties, absent an abuse of discretion. *Byron v. Byron*, 10th Dist. No. 03AP-819, 2004-Ohio-2143, ¶ 15.

{¶ 31} Contempt of court is defined as disobedience of an order of a court. *Windham Bank v. Tomaszczyk*, 27 Ohio St.2d 55 (1971), paragraph one of the syllabus. It is "conduct which brings the administration of justice into disrespect, or which tends to embarrass, impede or obstruct a court in the performance of its functions." *Id.* "The purpose of contempt proceedings is to secure the dignity of the courts and the uninterrupted and unimpeded administration of justice." *Id.* at paragraph two of the syllabus. A court has both inherent and statutory authority to punish contempt. *Howell v. Howell*, 10th Dist. No. 04AP-436, 2005-Ohio-2798, ¶ 19, citing *In re Contempt of Morris*, 110 Ohio App.3d 475, 479 (8th Dist.1996).

{¶ 32} Courts classify contempt as either direct or indirect, and as either criminal or civil. *See Cincinnati v. Cincinnati Dist. Council 51*, 35 Ohio St.2d 197, 202-03 (1973). Contempt is classified as direct or indirect depending on where the contempt occurs. Direct contempt occurs in the presence of the court in its judicial function. *Byron* at ¶ 12. Indirect contempt involves behavior outside the presence of the court that demonstrates lack of respect for the court or for the court's orders. *Id.*

{¶ 33} "While both types of contempt contain an element of punishment, courts distinguish criminal and civil contempt not on the basis of punishment, but rather, by the character and purpose of the punishment." *Brown v. Executive 200, Inc.*, 64 Ohio St.2d 250, 253 (1980). " 'Civil as distinguished from criminal contempt is a sanction to enforce compliance with an order of the court or to compensate for losses or damages sustained by reason of noncompliance.' " *Pugh v. Pugh*, 15 Ohio St.3d 136, 140 (1984), quoting *McComb v. Jacksonville Paper Co.*, 336 U.S. 187, 191 (1949). Criminal contempt sanctions are not coercive in nature but act as "punishment for the completed act of disobedience, and to vindicate the authority of the law and the court." *Brown* at 254.

{¶ 34} Although, "[i]n cases of criminal, indirect contempt, it must be shown that the alleged contemnor intended to defy the court," in cases of "civil contempt" it is "irrelevant that the transgressing party does not intend to violate the court order. If the dictates of the judicial decree are not followed, a contempt citation will result." *Midland Steel Prods. Co. v. U.A.W. Local 486*, 61 Ohio St.3d 121 (1991), paragraph two of the syllabus; *Pedone v. Pedone*, 11 Ohio App.3d 164, 165 (8th Dist.1983). *See also Windham Bank* at paragraph three of the syllabus. For civil contempt, the burden of proof is clear and convincing evidence; for criminal contempt, the burden of proof is proof beyond a reasonable doubt. *Lopez v. Lopez*, 10th Dist. No. 04AP-508, 2005-Ohio-1155, ¶ 56; *Brown* at syllabus. It is well-settled that to find a litigant in contempt, the court must find the existence of a valid court order, that the offending party had knowledge of such order, and that such order was, in fact, violated. *McCall v. Kranz*, 10th Dist. No. 15AP-436, 2016-Ohio-214, ¶ 9, citing *Arthur Young & Co. v. Kelly*, 68 Ohio App.3d 287, 295 (10th Dist.1990). Once the complainant has satisfied his or her initial burden of demonstrating the other party violated a court order, the burden shifts to the other party to either rebut the showing of contempt or demonstrate an affirmative defense by a preponderance of the evidence. *Ryan v. Ryan*, 10th Dist. No. 14AP-28, 2014-Ohio-3049, ¶ 12.

{¶ 35} The August 10, 2016 motion to show cause and the trial court's granting thereof finding contempt and imposition of sanctions and attorney fees at issue in this appeal concern indirect, civil contempt.

{¶ 36} The November 7, 2016 decision and entry, February 13, 2017 magistrate's decision, May 17, 2017 decision and entry, and December 21, 2018 magistrate's decision were interlocutory decisions addressing the court's determinations to: (1) grant the motion to show cause; (2) hold appellant in contempt of court; and (3) impose sanctions and attorney fees to enforce compliance and compensate for loss as a result of contempt. Integral to these decisions is the court's initial finding on November 7, 2016 that appellant violated the Agreed Entry by filing a claim with the civil rights commission, a report with police, and claims with two insurance companies, Hartford and Liberty. Appellant's objections to the magistrate's February 13, 2017 decision, appellant's September 18, 2017 Notice, and appellant's objections to the magistrate's December 21, 2018 decision were, in essence, attempts by appellant to rebut appellees' showing of contempt and move the court

to reconsider the determinations to initially find appellant had violated the Agreed Entry, grant the motion to show cause, hold appellant in contempt of court, and impose sanctions for the same. In particular, the September 18, 2017 Notice moved the court to consider the supplemental information. We construe the court's refusal to relitigate the same as not only overruling of objections to and adoption of the magistrates' decisions but, also, denials of appellant's efforts to move the court to reconsider the same.

{¶ 37} In accordance with Civ.R. 53, the trial court reviews a magistrate's decision de novo. *Black v. Columbus Sports Network, LLC*, 10th Dist. No. 13AP-1025, 2014-Ohio-3607, ¶ 14, citing *Mayle v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 09AP-541, 2010-Ohio-2774, ¶ 15. In reviewing objections to a magistrate's decision, the trial court must make an independent review of the matters objected to in order "to ascertain [whether] the magistrate has properly determined the factual issues and appropriately applied the law." Civ.R. 53(D)(4)(d). An appellate court, by contrast, applies an abuse of discretion standard when reviewing a trial court's adoption of a magistrate's decision. *Id.* at ¶ 15. An abuse of discretion connotes more than an error of law or judgment; it implies the trial court's attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983). Claims of error by the trial court must be based on the trial court's actions, rather than on the magistrate's findings. *Mayle* at ¶ 15. Therefore, we may reverse the trial court's adoption of the magistrate's decision only if the trial court acted unreasonably, arbitrarily, or unconscionably. *Id.*

{¶ 38} The same standard of review applies to a trial court's ruling on a motion for reconsideration. " 'A trial court has plenary power in ruling on a motion for reconsideration, and we will not reverse such rulings absent an abuse of discretion.' " *Black* at ¶ 19, quoting *Mindlin v. Zell*, 10th Dist. No. 11AP-983, 2012-Ohio-3543, ¶ 23. With these standards of review in mind, we will now consider appellant's assignments of error.

IV. Analysis of the Fourth Assignment of Error

{¶ 39} In her fourth assignment of error, appellant specifically argues the Agreed Entry was not in force once the court ordered the parties to participate in the arbitration process and stayed the case pending completion of the same. In support of this argument, appellant points to the trial court's decision of November 10, 2015 which ordered the parties claims, counterclaims, and defenses be submitted to binding arbitration and ordered

"[p]laintiffs' claims against TRG, including TRG's defenses, are hereby STAYED pending the resolution of the arbitration process." (Emphasis sic.) (Nov. 10, 2015 Decision at 6.)

{¶ 40} The trial court stayed appellees' claims against TRG and TRG's defenses in response to appellees' July 20, 2015 motion requesting the same pursuant to R.C. 2711.02(B).[13] R.C. 2711.02(B) states that "[i]f any action is brought upon any issue referable to arbitration under an agreement in writing for arbitration, the court in which the action is pending, upon being satisfied that the issue involved in the action is referable to arbitration under an agreement in writing for arbitration, shall on application of one of the parties *stay the trial of the action* until the arbitration of the issue has been had in accordance with the agreement, provided the applicant for the stay is not in default in proceeding with arbitration." (Emphasis added). Courts of this state have recognized that the purpose of a preliminary injunction pending arbitration is to preserve the status quo of the parties pending a decision on the merits. *See E. Cleveland Firefighters, IAFF Local 500, AFL-CIO v. E. Cleveland*, 8th Dist. No. 88273, 2007-Ohio-1447, ¶ 5, citing *State ex rel. CNG Financial Corp. v. Nadel*, 111 Ohio St.3d 149, 2006-Ohio-5344; *Dunkelman v. Cincinnati Bengals, Inc.*, 158 Ohio App.3d 604, 2004-Ohio-6425 (1st Dist.); *Proctor & Gamble Co. v. Stoneham*, 140 Ohio App.3d 260 (1st Dist.2000); *see also Nationwide Mutual Ins. Co. v. Universal Fidelity Corp.*, S.D.Ohio No. C2-01-1271 (July 15, 2002) (recognizing that injunctions pending arbitration should ordinarily be limited to preserving the status quo so that the arbitration is not a "hollow proceeding"); *Parsley v. Terminix Internatl. Co. L.P.*, S.D.Ohio No. C-3-97-394 (Sept. 15, 1998) (recognizing preliminary injunction is only warranted when necessary to preserve the meaningfulness of the arbitration process). Similar reasoning applies here where the Agreed Entry was stipulated to and entered "as to" appellees' motion for preliminary injunction. The trial court did not err when it determined the Agreed Entry was still in effect during the pendency of arbitration.

{¶ 41} Accordingly, the fourth assignment of error is overruled.

[13] The exact wording of this order refers to a stay of claims and defenses involving TRG, a non-party to this case. However, the parties and the court all seem to understand it to also refer to a stay of the claims and defenses between the parties while the arbitration was pending. Such understanding is consistent with R.C. 2711.02(B).

V. Analysis of the First, Third, and Part (C) of the Seventh Assignments of Error

A. First Assignment of Error

{¶ 42} In her first, third, and part (C) of her seventh assignments of error, appellant argues the trial court erred in enforcing the Agreed Entry, finding appellant violated the Agreed Entry, failing to hold a hearing on the violations, and failing to reconsider its finding of violations. In support of her first assignment of error, appellant argues the trial court erred in its interpretation of the Agreed Entry, first, by misconstruing the "spirit" of the Agreed Entry; and second, by interpreting the Agreed Entry to prohibit her from representing herself as an owner or member of RRL; and third, by interpreting the Agreed Entry to prohibit her from reporting or forcing her to conceal a crime.[14]

{¶ 43} First, appellant argues that the "spirit" of the Agreed Entry is that she refrain from representing that she has authority to transact business on behalf of RRL or IHT. We agree that Section IV of the Agreed Entry, regarding non-solicitation and trade secrets, expresses the same. However, there are four additional sections of the Agreed Entry. Section I, regarding non-affiliation, is what is at issue here. Therefore, we find the trial court did not misconstrue the spirit of the Agreed Entry as appellant argues.

{¶ 44} Second, Section I, paragraph a, stipulates that appellant and TRG would refrain from: "representing to any person, business, or entity that Defendants are employees, agents, *authorized representatives,* producers, officers, managers or doing business as, *or in any way working with or for*, plaintiffs IHT or RRL." (Emphasis added.) It is true, as appellant points out, that the Agreed Entry does not specifically use the words "member" or "owner," and that whether appellant remains a member or owner of RRL is at the heart of this dispute. Nevertheless, whether, in identifying herself as a member or owner, appellant was representing herself as an authorized representative or in any way working with or for IHT or RRL, depends on the context of her representation and all the surrounding facts. Accordingly, it is important to carefully examine the same for each alleged violation. We do this as we consider the third assignment of error and part (C) of the seventh assignment of error.

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[14] In light of the court's determination sustaining in part the first, third, and part (C) of the seventh assignments of error, it is not necessary for this court to consider whether the Agreed Entry prohibits appellant from reporting or forcing her to conceal a crime.

B. Third and Part (C) of the Seventh Assignments of Error

{¶ 45} In her third assignment of error and part (C) of her seventh assignment of error, appellant argues the court erred in not holding a hearing on the finding of violations, in not providing appellant an opportunity to rebut the finding of violations or, in the alternative, in essence, in not reconsidering the initial finding of violations of the Agreed Entry. Appellant argues the court made its initial finding of violations based on documents drafted by other persons—the civil rights commission's redetermination letter and the police intake form—and she was updating the insurance claim she filed prior to the Agreed Entry. Appellant further argues the court did not take into consideration the supplemental evidence she submitted with the September 18, 2017 Notice and exhibits thereto.

{¶ 46} We agree the trial court did not give appellant an opportunity to rebut its initial finding of violations of the Agreed Entry with regard to the civil rights commission's claim and the police report and abused its discretion in not reconsidering its interlocutory finding of November 7, 2016 and May 17, 2017, and in entering the final decision of March 15, 2019 with regard to the insurance claims. This is evidenced in the court's implicit rejection, without any reference thereto of the September 18, 2017 Notice and exhibits thereto and appellant's objections to the magistrates' decisions. It is also evidenced by the court's express words in its decisions.

{¶ 47} In the court's November 7, 2016 decision, the court initially found appellant violated the Agreed Entry and referred the matter to the magistrate to set a hearing for the narrow purpose of having appellant "show cause for why she should not be held in contempt for her [violations]." (Nov. 7, 2016 Decision at 5.) At the February 8, 2017 hearing, the magistrate began by noting that the hearing was limited to two issues, the "second [issue] is - - we have to do whether Merrilee Stewart's conduct in - - violates the agreement or the spirit of the agreement that was entered into on or about May 26th, 2015, agreed entry as to the plaintiff RRL Holding Company of Ohio, LLC and IHT Insurance Agency Group, LLC motion for a preliminary injunction that was agreed to." (Tr. at 2.) Appellees' counsel then attempted to narrow the scope of the hearing to a determination of whether appellant should be held in contempt for her violations and the magistrate agreed. However, the magistrate did permit appellant's counsel to make an opening statement which addressed each of the four violations the court had previously determined.

Furthermore, notwithstanding the magistrate informing appellant of the limited scope of the hearing, appellant testified, on direct, cross-, and redirect-examination, in detail that she did not violate the Agreed Entry when she filed the claim with the civil rights commission, the report with police, and the claims with the insurance companies. In the February 13, 2017 decision as discussed above, the magistrate did discuss appellant's testimony and found it to be not credible.

{¶ 48} In the May 17, 2017 decision adopting the magistrate's decision, the court likewise addressed appellant's testimony, but observed that at the magistrate's hearing, appellant "sought to relitigate * * * the Court's ruling that she had violated [the Agreed Entry]." (May 17, 2017 Decision at 3.) Furthermore, despite its narrow instruction on the scope of the magistrate's hearing in the November 7, 2016 decision, the court noted that the November 7, 2016 decision "referred the issue of contempt to [the magistrate] for a hearing at which [appellant] was provided an opportunity to rebut [appellees'] initial showing" that appellant had violated the Agreed Entry. (May 17, 2017 Decision at 4.)

{¶ 49} Nevertheless, four months later, immediately prior to the next hearing, appellant filed her September 18, 2017 Notice. For the reasons we discuss in detail below, we find the September 18, 2017 Notice and the exhibits thereto warranted careful consideration by the trial court. However, the court never addressed or even mentioned the September 18, 2017 Notice and exhibits thereto.

{¶ 50} In the December 21, 2018 decision, the magistrate noted that, pursuant to the court's July 5, 2017 order of reference, the magistrate heard evidence and arguments in order to determine "appropriate sanction(s) for [appellant's] four separate violations of the Agreed Entry, including but not limited to attorney fees." (Dec. 21, 2018 Mag. Decision at 5.) The magistrate observed that appellant presented no credible evidence or argument to challenge an award of sanctions; rather, appellant "sought (yet again) to relitigate the Court's ruling that [she] violated the Agreed Entry."[15] (Dec. 21, 2018 Mag. Decision at 6.) The magistrate concluded "th[e] Court has previously determined that [appellant] acted in indirect contempt of this Court by her four separate violations of the Agreed Entry." (Dec. 21, 2018 Mag. Decision at 8.)

[15] The record does not contain a transcript of the September 18, 2017 hearing.

{¶ 51} In her January 4, 2019 objections to the December 21, 2018 magistrate's decision, appellant specifically objected that the magistrate failed to review the evidence presented in the September 18, 2017 Notice and exhibits thereto. Appellant argued "[p]erhaps the most egregious error in the magistrate's decision of December 21, 2018 is the failure to review the supplemental documentation provided to the court on September 18, 2017." (Appellant's Obj. at 18.)

{¶ 52} The magistrate's December 21, 2018 decision did not stray from the court's narrow order of reference to the magistrate, and in its March 15, 2019 decision, the court did not address appellant's specific objection. Nevertheless, construing the September 18, 2017 Notice as a motion for an opportunity to rebut or a motion to reconsider the court's initial finding of violations, the court erred in not even mentioning the September 18, 2017 Notice. Rather, the court noted "[u]nsurprisingly, [appellant's] objection to [the magistrate's] Decision is nothing more than another attempt to relitigate the Court's prior rulings, [and] [r]ather, as stated by [appellees], 'she again argues that she never should have been held in contempt in the first instance.' " (Mar. 15, 2019 Decision at 7.) Despite the court's prior rulings being interlocutory in nature, the court rejected appellant's effort to convince the court to provide her an opportunity to rebut and to reconsider its initial finding that she violated the Agreed Entry.

{¶ 53} A court may reconsider and reverse an interlocutory decision at any time before the entry of final judgment, either sua sponte or upon motion. *Alternatives Unlimited-Special, Inc. v. Ohio Dept. of Edn.*, 10th Dist. No. 12AP-647, 2013-Ohio-3890, ¶ 27. "[R]econsideration of interlocutory decisions is a matter within the judge's sound discretion." *Id.* at ¶ 68. As noted above, an appellate court will not disturb a trial court's denial of reconsideration absent an abuse of discretion.

{¶ 54} A detailed discussion of the court's initial finding of violations, the August 10, 2016 motion and exhibits, evidence from the February 8, 2017 hearing, the September 18, 2017 Notice and exhibits thereto, and appellant's objections to the magistrates' decisions is now warranted to explain our conclusion that the trial court erred in not giving appellant an opportunity to rebut its initial finding of violations regarding the civil rights commission's claims, the police report, and in not reconsidering its initial finding of violations regarding the insurance claims.

1. Civil rights commission claim

{¶ 55} The court's initial finding that appellant violated the Agreed Entry by filing a claim with the civil rights commission was based on exhibit A to the August 10, 2016 motion to show cause.

{¶ 56} The August 10, 2016 exhibit A is a copy of the civil rights commission letter of determination upon reconsideration. In denying appellant's request to reconsider its prior finding of no probable cause and declination to sue appellees for unlawful discrimination, the civil rights commission made, inter alia, the following finding of fact: "Although her charge alleges that she was constructively discharged, she now denies this in her request for reconsideration, claiming that 'I am now and remain a member/owner' of [appellees]." (Nov. 7, 2016 Decision at 4, quoting Civil Rights Commission Letter at 2.) At the hearing before the magistrate on February 8, 2017, appellant attempted to convince the magistrate to reconsider the court's initial finding. Appellant testified she included herself in submitting a list of all the members of RRL but was representing herself as the claimant/victim; her understanding of the Agreed Entry was that it prohibited her from holding herself out as representing IHT or RRL; and she never intended to violate the Agreed Entry with her filing of the civil rights commission claim. As noted previously, the magistrate was not persuaded and found her explanations to be unavailing as appellant did nothing to object to the civil rights commission's statement and did not convince the magistrate that the civil rights commission was mistaken when it stated she held herself out as a member or owner. The trial court agreed appellant's explanations were wholly implausible and unavailing. The court further found appellant's testimony was belied by the document presented at the hearing and rejected appellant's arguments that the civil rights commission's letter was impermissible hearsay as appellant did not raise the same objection at the time the letter was admitted, the letter was a public record, and appellant's statement was the admission of party-opponent. The trial court adopted the magistrate's decision as to the civil rights commission's claim.

{¶ 57} Appellant again attempted to convince the trial court to reconsider its initial finding with the September 18, 2017 Notice and exhibits thereto. In the notice, appellant argued the confusion before the civil rights commission stemmed from appellant's complaint related to charges affecting her personally and other charges stemming from her

firsthand knowledge from her management and board roles at IHT from the years 2007 to 2014, as well as from references to IHT and RRL as IHT/RRL rather than as two separate entities. Appellant also made several arguments regarding the interpretation of the IHT Operating Agreement and the Buy/Sell Agreements. Further, she claimed it is clear from her claim before the civil rights commission that she is a victim and a whistleblower and that appellees' alleged discriminatory treatment of her was retaliation.

{¶ 58} The notice referred to numerous exhibits. Most of the exhibits were filed several days later, on September 22, 2017, with a statement that the "attached exhibits [were] referenced to the Judge in the evidentiary hearing on Monday, September 18, 2017 and in [the September 18, 2017 Notice]." The exhibits are voluminous, approximately 300 pages, and are not presented in an organized manner thereby making it difficult for the trial court and this court to review.

{¶ 59} Notwithstanding, specific to the civil rights commission's claim the exhibits contain copies of several documents purportedly submitted to the civil rights commission, including a copy of the original claim. In these documents, appellant makes several statements to the civil rights commission which provide context to the representations appellant made to the civil rights commission and warranted a hearing to provide appellant an opportunity to rebut the court's initial finding of violations. Following is a brief summary of some of appellant's statements to the civil rights commission as shown in the exhibits:

> • In a document titled "event date clarification," appellant explained to the civil rights commission that she had also filed a report with HUD about appellees alleged violations of fair housing laws. She indicated therein that her knowledge of this was "by virtue of holding a management position at IHT in the years 2007-2014." (Sept. 22, 2017 Event Date Clarification, at 1.); and
>
> • In a document titled "original Ohio Civil Rights complaint" and a "narrative" thereto, appellant stated: (a) that the events about which she was complaining took place from "2007 through 2015, the most recent act in May 2015" (Narrative at 3.); (b) that she was one of four members holding 16.7 percent membership in RRL/IHT; (c) that she can only provide financial info up to August 2014 because after that point "she has been denied access to all data" (Narrative at 6.) and that she has "never been an employee, and has always been a

> member" (Narrative at 7.); (d) that the male members tried to remove her as a member on December 30, 2014; and (e) that the male members had cut off her health and vision insurance, stopped her distributions, discriminated against her and retaliated against her.

{¶ 60} If, in fact, these statements provided the specific context of her statement to the civil rights commission that she is "now and remains a member/owner" of appellees, we could not uphold a finding that by clear and convincing evidence appellant violated the Agreed Entry. We recognize, however, that these documents are copies and summaries. Accordingly, we remand the decision, as to the civil rights commission's claim, to the trial court to hold a hearing on the September 18, 2017 Notice and exhibits thereto and provide appellant an opportunity to rebut the court's initial finding of violations to determine whether reconsideration is warranted.

2. Police report

{¶ 61} The court's initial finding that appellant violated the Agreed Entry by filing a report with police was based on exhibit B to the August 10, 2016 motion to show cause.

{¶ 62} The August 10, 2016 exhibit B is a copy of the preliminary investigation report of the Columbus Division of Police regarding the claim made by appellant that IHT was the victim of embezzlement. The report indicates: the reporting officer and the officer who entered the report into the system were the same; it was entered the same day it was reported, July 7, 2016; the "call source" was a "walk-in"; the victim is listed as IHT Insurance; no other victims are listed; appellant is listed as a "witness" and her work address is listed as 6457 Reflections Drive, Dublin, Ohio 43017; and her "employer" is listed as IHT Insurance and the "employer address" is listed as 6457 Reflections Drive, Dublin, Ohio 43017. At the hearing before the magistrate on February 8, 2017, appellant attempted to convince the magistrate to reconsider the court's initial finding. Appellant testified she went to the police station and gave some information to an officer who scribbled down notes on a scratch pad, she gave the officer her driver's license to show him her name and address, and she filed the report "[a]s an individual and a victim." (Tr. at 31.) She further testified she never saw the report until the motion for contempt was filed. As noted above, the magistrate was not persuaded by appellant's testimony and found her explanation that the officer filed the report using erroneous information and her statement that she did not have

a prior opportunity to see or correct the report to be not worthy of belief. The magistrate reasoned that a person who claims she is a victim to the tune of $5-10 million dollars would follow up to see how the claim was progressing. The trial court agreed and found appellant's explanation regarding the police report was, at best, wanting. The trial court adopted the magistrate's decision as to the police report.

{¶ 63} Appellant again attempted to convince the trial court to reconsider its initial finding with the September 18, 2017 Notice and exhibits thereto. In the September 18, 2017 Notice, appellant argued the finding that she had held herself out as representing IHT in filing the police report was based on an intake form, not the claim report that she had submitted "as a victim and an informant." (Sept. 18, 2017 Notice at 13.) She claimed she had submitted to police a series of actual court documents "to show what each parties claim" [sic], and details of her claims as a victim. She included in the notice a narrative which stated:

> • "I see my authority to report this criminal activity from my position as an 'Insider – Whistle Blower' and also as a victim of the systematic embezzlement," and
>
> • "I was active in the management of IHT Insurance Agency Group * * * during the years of 2007 to 2014."

(Sept. 18, 2017 Notice at 13.)

{¶ 64} Appellant also attached three "demand letters," which she stated reveal the specifics of what she told police. In the demand letters, appellant is identified as having "succeeded to the rights of Norman L. Fountain, Norman L. Fountain Ins. & Assoc., LLC, and Speedy Auto Insurance Agency, LLC, including the trade names of Your Insurance Agency and Client Choice Insurance (collectively, the 'Fountain Entities')." (Sept. 23, 2016 "Demand Letter.") The letter states it includes demand for commissions owed to her by IHT as well as amounts due and owing to Fountain Entities. Also included are several copies of letters from Norman L. Fountain to whom it may concern, indicating appellant is an "additional Agency Owner and Principle in my agency." (Dec. 5, 2015 Letter.)

{¶ 65} If, in fact, these statements and exhibits provided the specific context of her filing the report with police, we could not uphold by clear and convincing evidence appellant violated the Agreed Entry. We recognize, however, that these statements and exhibits are copies and summaries. Accordingly, we remand the decision, as to the police

report, to the trial court to hold a hearing on the September 18, 2017 Notice and exhibits thereto and provide appellant an opportunity to rebut the court's initial finding of violations to determine if reconsideration is warranted.

3. Insurance claims

{¶ 66} The court's initial finding that appellant violated the Agreed Entry by filing claims with Hartford and Liberty was based on exhibit C and appendices thereto attached to the August 10, 2016 motion to show cause.

{¶ 67} Exhibit C and appendices one through five are copies of e-mails sent by appellant to Hartford in an effort to report alleged embezzlement at IHT and a claims summary filed with Liberty regarding the same. At the hearing before the magistrate on February 8, 2017, appellant attempted to convince the magistrate to reconsider the court's initial finding. Appellant testified she was one of the victims on whose behalf she filed the insurance claims and that other victims included IHT, agents, and customers. She conceded that although the Liberty claims summary did not contain her name, she did in fact file the claim. She also explained that the e-mails to Hartford were follow-up communications to a claim she had initiated before signing the Agreed Entry and that she filed the claims and updates on the advice of counsel. As noted previously, the magistrate was not persuaded and reasoned that such advice did not relieve her of her responsibility to abide by the Agreed Entry and that it could not excuse such conduct. The trial court noted appellant's explanation that she had filed the insurance claims in her personal capacity but found that, as an insurance professional, appellant would have understood that the policies were for losses suffered by IHT. The court found to be not credible appellant's position that she did not realize she was holding herself out as a representative of IHT when filing the claims. The trial court adopted the magistrate's decision as to the insurance claims.

{¶ 68} Upon careful review of exhibit C and attached appendices, it appears that when filing the insurance claim with Hartford, appellant clarified the uncertainty of her status as a member/owner. In her July 19, 2016 e-mail, while she did represent herself as a member/owner, she also listed the names of the other owners and their percentages. She also explained that at a meeting in September 2014, the partnership relationship was severed and that in October 2014, she was informed by Bill Griffioen there was no longer

any future for her at the company. She stated that three members had made an attempt to oust her from the company. In her July 20, 2016 e-mail, she listed herself as an "Estranged member and owner IHT/RRL." (Exhibit C, Appendix 2, to the Aug. 10, 2016 Mot. to Show Cause.) In her July 28, 2016 e-mail, appellant again listed herself as an "Estranged member/owner." Furthermore, consistent with her testimony at the February 8, 2017 hearing as the person/entity who suffered loss due to the alleged embezzlement, appellant listed IHT/RRL, agents, employees, managers, independent producers, owners, taxing authorities, and customers. The Liberty claims summary does not list appellant's name and also does not indicate who is the claimant or the position of the claimant. Finally, we note appellees presented no evidence regarding who had authority pursuant to the contracts with Hartford and Liberty to file claims and who or what entity was the insured. On this initial evidence alone, we cannot uphold a finding that by clear and convincing evidence appellant violated the Agreed Entry. The September 18, 2017 Notice and exhibits thereto pertaining to the insurance claims, although not necessary to our conclusion, reinforce our conclusion that the trial court erred in not reconsidering its initial finding that appellant violated the Agreed Entry by filing the insurance claims.

{¶ 69} Appellant again attempted to convince the trial court to reconsider its initial finding with the September 18, 2017 Notice and exhibits thereto. In the Notice, appellant again stated she filed the insurance claims prior to the filing of the Agreed Entry and that she subsequently updated the insurance companies upon the advice of counsel. Exhibits filed on September 22 contain copies of additional e-mails between appellant and Hartford in which appellant appears to be inquiring whether she is an insured member of the limited liability company. The Hartford representative, Julie Dengler, responds in an April 29, 2015 e-mail that "[m]embers of a limited liability company are insureds only with respect to the conduct of your business." In a February 20, 2017 e-mail from appellant to Hartford, appellant states that she believes she is insured under the Hartford – IHT policy as her membership interest in RRL is unredeemed. She goes on to say "[m]y active involvement in the management of IHT Insurance Agency Group was 2007 to 2014."

{¶ 70} Even without these e-mails providing context to the filing of the claims with the insurance companies, we cannot uphold a finding that by clear and convincing evidence, based solely on exhibit C and appendices to the August 10, 2016 motion, appellant

violated the Agreed Entry. Therefore, we sustain the first, third, and part (C) of the seventh assignments of error to the extent they assign error in not reconsidering its finding of violations regarding the filing of the insurance claims.

{¶ 71} Accordingly, we sustain appellant's first, third, and part (C) of the seventh assignments of error to the extent they allege the trial court erred in not holding a hearing and in not providing an opportunity to rebut its initial finding that appellant violated the Agreed Entry when she filed a claim with the civil rights commission and a report with police. On remand, the court shall hold a hearing on the September 18, 2017 Notice and exhibits thereto to provide appellant an opportunity to rebut the initial finding of violations regarding the civil rights commission claim and police report to determine if reconsideration is warranted. Furthermore, we sustain the same assignments of error to the extent they allege the trial court erred in not reconsidering its initial finding that appellant violated the Agreed Entry when she filed the insurance claims. On remand, the trial court shall vacate that finding and any award of sanctions or attorney fees pertaining thereto. Finally, to the extent appellant's first, third, and seventh assignments of error allege additional errors or abuse, they are rendered moot.

VI. Analysis of the Second, Fifth, and Sixth Assignments of Error

{¶ 72} In her second, fifth, and sixth assignments of error, appellant argues the trial court erred by imposing sanctions on appellant and awarding appellees attorney fees. Pursuant to our resolution of the fourth, first, third, and part (C) of the seventh assignments of error, we find the second, fifth, and sixth assignments of error are rendered moot.

VII. Analysis of the Seventh Assignment of Error Parts (A) and (B)

{¶ 73} In parts (A) and (B) of her seventh assignment of error, appellant alleges the trial court erred in not granting her September 18, 2017 motion for sanctions. The trial court denied this motion on December 12, 2017. Appellant argues the court erred in not imposing sanctions: (1) on Fritz Griffioen for tendering a false affidavit and interfering with a police investigation, a court proceeding, and insurance investigation, and (2) on appellees' Attorney James R. Carnes for attorney misconduct, perjury, fraud, witness tampering, abuse of process, and other claims. Appellant further alleges the trial court erred in not holding a hearing on the same. We decline to address appellant's seventh assignment of error, parts (A) and (B), as the court's ruling denying sanctions was not addressed in any of

the court's decisions addressed in the notice of appeal. Accordingly, parts (A) and (B) of appellant's seventh assignment of error are dismissed.

VIII. Conclusion

{¶ 74} Appellant's fourth assignment of error is overruled. To the extent appellant alleges the trial court erred in not granting a hearing and not providing an opportunity to rebut its initial finding that appellant violated the Agreed Entry by filing a claim with the civil rights commission and a report with police; and to the extent appellant alleges the trial court erred in not reconsidering its initial finding that appellant violated the Agreed Entry by filing claims with the insurance companies, appellant's first, third, and part (C) of her seventh assignments of error are sustained and the March 15, 2019 decision and entry of the Franklin County Court of Common Pleas is reversed in part. The remainder of the first, third, and seventh assignments of error, as well as the second, fifth, and sixth assignments of error are rendered moot. Finally, parts (A) and (B) of the seventh assignment of error are dismissed as the court's December 12, 2017 entry was not raised in the notice of appeal. This case is remanded to the trial court in accordance with law and the instructions within this decision.

Judgment reversed in part;
cause remanded with instructions.

NELSON, J., concurs.
SADLER, P.J., concurs in part and dissents in part.

SADLER, P.J., concurring in part and dissenting in part.

{¶ 75} I concur in the majority decision overruling the second, fourth, fifth, and sixth assignments of error and overruling in part appellant's seventh assignment of error. However, because I disagree with the majority in sustaining appellant's first and third assignments of error and sustaining appellant's seventh assignment of error in part, I respectfully concur in part and dissent in part.

{¶ 76} The majority decision summarizes its ruling in this appeal at the "Conclusion," which reads in relevant part as follows:

> To the extent appellant alleges the trial court erred in not granting a hearing and not providing an opportunity to rebut its initial finding that appellant violated the Agreed Entry by filing a claim with the civil rights commission and a report

> with police; and to the extent appellant alleges the trial court erred in not reconsidering its initial finding that appellant violated the Agreed Entry by filing claims with the insurance companies, appellant's first, third, and part (C) of her seventh assignments of error are sustained and the March 15, 2019 decision and entry of the Franklin County Court of Common Pleas is reversed in part.

(Majority Decision at ¶ 74.)

{¶ 77} Because I believe the record in this case shows that appellant had an opportunity to present evidence to rebut the trial court's initial determination that appellant violated the Agreed Entry, I disagree with the majority's conclusion.

{¶ 78} In its November 7, 2016 decision and entry granting appellees' August 10, 2016 motion to show cause, the trial court summarized the allegations in appellees' motion and examined the evidence submitted by appellees in support of the allegations. The trial court also considered appellant's memorandum in opposition to the motion to show cause, wherein appellant argued that the Agreed Entry was mooted by the pending arbitration and that her conduct as alleged in the motion, if proven true, did not constitute a violation of the Agreed Entry as appellant interpreted the document.

{¶ 79} The trial court first determined the Agreed Entry was not mooted by the submission of the case to arbitration. The trial court next determined that appellant's conduct as alleged in the motion violated the Agreed Entry, as the trial court interpreted the document, in four ways: (1) filing a complaint with the civil rights commission in which appellant allegedly stated: "I am now and remain a member/owner of [IHT]"; (2) submitting an oral report to the Columbus Police Department regarding alleged embezzlement of IHT funds; (3) submitting a claim to Hartford Insurance Company in IHT's behalf; and (4) submitting a claim to Liberty Mutual Insurance Company on IHT's behalf. (May 19, 2016 Letter of Determination, attached as Ex. A to Aug. 10, 2016 Mot. to Show Cause.) The trial court then referred the case to a magistrate for appellant "to appear and show cause for why she should not be held in contempt for her failure to comply with the parties' May 28, 2015 Agreed Entry." (Nov. 7, 2016 Decision & Entry at 5.)

{¶ 80} In sustaining several of appellant's assignments of error, the majority finds the magistrate unfairly prevented appellant from presenting evidence and argument at

the February 8, 2017 evidentiary hearing in support of her contention that she did not engage in conduct violative of the Agreed Entry. However, in my view, the magistrate's decision and the trial court's subsequent decision overruling appellant's objections reveal the magistrate merely prevented appellant from making the same legal arguments that the trial court previously considered and rejected in its November 7, 2016 decision and entry. Contrary to the majority's conclusion, the record shows the magistrate permitted appellant to present evidence and arguments in support of her contention that she did not engage in the contumacious conduct alleged in the motion.

{¶ 81} At the hearing before the magistrate, appellant made two legal arguments: (1) the Agreed Entry was moot; and (2) appellant's conduct as alleged in appellees' motion to show cause and as evidence in the supporting documents, if proven true, did not result in a violation of the Agreed Entry as appellant interpreted the document. Because the trial court had resolved both of those legal issues in its November 7, 2016 decision and entry granting appellees' motion to show cause, the magistrate determined she did not have the authority to reconsider the trial court's decision on those legal issues. I agree with the magistrate on this issue. *See* Civ.R. 53(D)(1).[16]

{¶ 82} In addition to the preceding legal arguments, appellant also argued she did not engage in the contumacious conduct alleged in appellees' motion to show cause and evidenced by the documents submitted by appellees. With regard to the civil rights complaint, appellant attempted to prove, by her own testimony, that she did not make the statements attributed to her in the commission's report. With regard to the Columbus Police Department report, appellant attempted to show, by her own testimony, that the

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[16] Civ.R. 53(D)(1), entitled "[r]eference by court of record," provides, in relevant part, as follows:

> (a) Purpose and method.
>
> A court of record may, for one or more of the purposes described in Civ.R. 53 (C)(1), refer a particular case or matter or a category of cases or matters to a magistrate by a specific or general order of reference or by rule.
>
> (b) Limitation.
>
> A court of record may limit a reference by specifying or limiting the magistrate's powers, including but not limited to, directing the magistrate to determine only particular issues, directing the magistrate to perform particular responsibilities, directing the magistrate to receive and report evidence only, fixing the time and place for beginning and closing any hearings, or fixing the time for filing any magistrate's decision on the matter or matters referred.

officer who took her oral report mistakenly identified IHT as the victim, rather than appellant. Finally, with regard to the insurance claims, appellant testified she submitted those claim on her own behalf, not on behalf of IHT, and she did so on the advice of counsel.

{¶ 83} The magistrate found appellant's testimony lacked credibility and determined that appellant had failed to rebut the trial court's preliminary ruling that appellant violated the Agreed Entry by her conduct as alleged in appellees' motion to show cause. In my view, the decision of the magistrate was based solely on the magistrate's assessment of the weight and credibility of appellant's testimony. Contrary to the conclusion reached in the majority decision, I do not find that the magistrate prevented appellant from making arguments or presenting evidence in support of her contention that she did not engage in the contumacious conduct alleged in appellees' motion to show cause. Appellant and her trial counsel simply elected to rely on appellant's testimony to rebut the allegations. The magistrate cannot be faulted for that decision.

{¶ 84} In her objections to the magistrate's decision, appellant persisted in arguing that the trial court had misinterpreted the Agreed Entry. She contended that the language used by the parties in the Agreed Entry did not prohibit her from claiming that she is a "member" or "owner" of IHT. My reading of appellant's objections reveals that appellant mischaracterized her purely legal argument regarding contract interpretation as a factual issue.[17] In overruling appellant's objections, the trial court rejected appellant's contention that the magistrate had erred by failing to hear evidence and argument regarding the meaning of the Agreed Entry. Appellant also objected to the magistrate's decision to disbelieve her testimony that she did not engage in the contumacious conduct alleged in appellees' motion to show cause. The trial court's May 17, 2017 decision provides, in relevant part, as follows:

> Stewart primarily objects to the Magistrate's Decision on the basis that she was not provided a full hearing before the Court's finding of contempt. However, as noted in Plaintiffs' reply, this is a false premise. The Court's November 7, 2016 Decision found that Plaintiffs met their initial burden to demonstrate by clear and convincing evidence that Stewart had violated the

[17] The interpretation of a written contract is, in the first instance, a matter of law for the court. *Columbus Countywide Dev. Corp. v. Junior Village of Dublin, Inc.*, 10th Dist. No. 03AP-73, 2003-Ohio-5447, ¶ 19.

> parties' Agreed Entry. The Court referred the issue of contempt to [a] Magistrate * * * for a hearing at which Stewart was provided an opportunity to rebut Plaintiffs' initial showing.
>
> Stewart further argues that her testimony at the hearing successfully rebutted Plaintiffs' showing. The Court disagrees. As discussed below, Stewart's testimony was wholly implausible and belied by the documents presented at the hearing.

(May 17, 2017 Decision at 4.)

{¶ 85} "Civil contempt must be demonstrated by clear and convincing evidence." *Brooks-Lee v. Lee*, 10th Dist. No. 11AP-284, 2012-Ohio-373, ¶ 13, citing *Flowers v. Flowers*, 10th Dist. No. 10AP-1176, 2011-Ohio-5972, ¶ 13, citing *Fidler v. Fidler*, 10th Dist. No. 08AP-284, 2008-Ohio-4688, ¶ 14. "The trier of fact is vested with discretion in determining whether clear and convincing evidence supports a contempt finding." *Flowers* at ¶ 13, citing *Fidler* at ¶ 14, citing *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279 (1978). "This is because ' "[c]redibility issues are not resolved as a matter of law, but are left to the trier of fact to determine." ' " *Flowers* at ¶ 13, quoting *Nott v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 10AP-1079, 2011-Ohio-5489, ¶ 6, quoting *Ciccarelli v. Miller*, 7th Dist. No. 03 MA 60, 2004-Ohio-5123, ¶ 35, citing *Lehman v. Haynam*, 164 Ohio St. 595 (1956). "Indeed, '[a] reviewing court should not reverse a decision simply because it holds a different opinion concerning the credibility of the witnesses and evidence submitted before the trial court. A finding of an error in law is a legitimate ground for reversal, but a difference of opinion on credibility of witnesses and evidence is not.' " *Flowers* at ¶ 13, quoting *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, ¶ 24, citing *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80 (1984).

{¶ 86} Here, the trial court reviewed the transcript of the hearing before the magistrate and the magistrate's decision. The trial court summarized and discussed appellant's testimony at the hearing and considered the stated reasons given by the magistrate for disbelieving appellant. The trial court agreed with the magistrate. Contrary to the opinion expressed by the majority, I perceive no error in the magistrate's decision or the trial court's ruling on appellant's objections. The record shows that appellant was provided an opportunity to submit evidence in support of her claim that she did not engage in the contumacious conduct alleged in appellees' motion to show

cause. Appellant relied on her own testimony, and the trial court found her testimony "wholly implausible and belied by the documents presented at the hearing." (May 17, 2017 Decision at 4.) Clearly, the trial court made a credibility determination in reaching the conclusion it did.

{¶ 87} Nonetheless, the majority concludes the magistrate erred and the trial court abused its discretion in refusing to consider supplemental evidence submitted by appellant, pro se, on September 18, 2017.[18] The majority criticizes the magistrate for refusing to exceed the authority granted by the order of reference, failing to sua sponte reconsider the issue of appellant's liability for contempt, and failing to resolve the issue based on evidence submitted on the morning of the scheduled sanctions hearing. The majority then holds that the trial court acted unreasonably, arbitrarily and/or capriciously when it overruled appellant's objection alleging that the magistrate erred by failing to do so. In my view, it would have been manifestly unfair to appellees, and in contravention of Civ.R. 53, for the magistrate and the trial court to have proceeded in the manner suggested by the majority.

{¶ 88} Civ.R. 53(D)(4)(d), entitled "[a]ction on objections," provides as follows:

> If one or more objections to a magistrate's decision are timely filed, the court shall rule on those objections. In ruling on objections, the court shall undertake an independent review as to the objected matters to ascertain that the magistrate has properly determined the factual issues and appropriately applied the law. *Before so ruling, the court may hear additional evidence but may refuse to do so unless the objecting party demonstrates that the party could not, with reasonable diligence, have produced that evidence for consideration by the magistrate.*

(Emphasis added.)

{¶ 89} Finally, though appellant referred to the evidence in the supplemental filing as "newly acquired information," there is no question that all the documents submitted by appellant on September 18, 2017 were created well prior to the February 8, 2017 evidentiary hearing before the magistrate and could have been produced by appellant at the hearing. (Appellant's Sept. 18, 2017 Notice at 1.) Thus, the record shows that the

[18] On April 3, 2017, the trial court granted the motion to withdraw filed by appellant's trial counsel and directed the parties to submit all future notices and filings to appellant, pro se.

supplemental evidence sought to be introduced by appellant as "newly acquired information" was not produced at the February 8, 2017 evidentiary hearing because of appellant's failure to exercise reasonable diligence in acquiring it, not because the magistrate prohibited appellant from introducing the evidence. In my view, it would have been unfairly prejudicial to appellees for the trial court to sua sponte reconsider appellant's liability for contempt based on appellant's supplemental evidence. *See* Civ.R. 53(D)(4)(d). Accordingly, I would hold the trial court did not abuse its discretion in refusing to consider the supplemental evidence.

{¶ 90} For the foregoing reasons, I would overrule appellant's assignments of error and affirm the judgment of the trial court. Because the majority does not, I respectfully concur in part and dissent in part.

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

RRL Holding Company of Ohio, LLC et al., :

Plaintiffs-Appellees, :

v. : No. 19AP-202
(C.P.C. No. 15CV-1842)

Merrilee Stewart, :

(REGULAR CALENDAR)

Defendant-Appellant, :

TRG United Insurance, LLC, :

Defendant-Appellee. :

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on January 23, 2020, appellant's fourth assignment of error is overruled. To the extent appellant alleges the trial court erred in not granting a hearing and not providing an opportunity to rebut its initial finding that appellant violated the Agreed Entry by filing a claim with the civil rights commission and a report with police; and to the extent appellant alleges the trial court erred in not reconsidering its initial finding that appellant violated the Agreed Entry by filing claims with the insurance companies, appellant's first, third, and part (C) of her seventh assignments of error are sustained and the March 15, 2019 decision and entry of the Franklin County Court of Common Pleas is reversed in part. The remainder of the first, third, and seventh assignments of error, as well as the second, fifth, and sixth assignments of error are rendered moot. Finally, parts (A) and (B) of the seventh assignment of error are dismissed as the court's December 12, 2017 entry was not raised in the notice of appeal. This case is remanded to the trial court in accordance with law and the instructions within this January 23, 2020 decision. Any outstanding appellate court costs shall be paid by appellee RRL Holding Company of Ohio, LLC/Firefly Insurance Agency.

DORRIAN, J., SADLER, P.J., & NELSON, J.

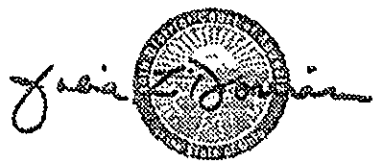
By /S/ JUDGE
Judge Julia L. Dorrian

SADLER, P.J., concurs in part and dissents in part.

Tenth District Court of Appeals

Date:	01-23-2020
Case Title:	RRL HOLDING COMPANY OHIO LLC ET AL -VS- MERRILEE STEWART ET AL
Case Number:	19AP000202
Type:	JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge Julia L. Dorrian

Electronically signed on 2020-Jan-23 page 2 of 2