Appendix A

The Supreme Court of Ohio

FILED
APR 13 2021
CLERK OF COURT
SUPREME COURT OF OHIO

Susan Lloyd

v.

Joshua Thornsbery, et al.

Case No. 2021-0145

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).

(Portage County Court of Appeals; No. 19-P-0108)

Maureen O'Connor
Chief Justice

The Official Case Announcement can be found at http://www.supremecourt.ohio.gov/ROD/docs/

The Supreme Court of Ohio

Susan Lloyd

v.

Joshua Thornsbery, et al.

Case No. 2021-0146

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).

(Portage County Court of Appeals; No. 2019-P-0080)

Maureen O'Connor
Chief Justice

Appendix B
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The Supreme Court of Ohio

Susan Lloyd

v.

Joshua Thornsbery, et al.

Case No. 2021-0145

RECONSIDERATION ENTRY

Portage County

It is ordered by the court that the amended motion for reconsideration in this case is denied.

(Portage County Court of Appeals; No. 19-P-0108)

Maureen O'Connor
Chief Justice

APPENDIX C

The Supreme Court of Ohio

Susan Lloyd

v.

Joshua Thornsbery, et al.

Case No. 2021-0146

RECONSIDERATION ENTRY

Portage County

It is ordered by the court that the amended motion for reconsideration in this case is denied.

(Portage County Court of Appeals; No. 2019-P-0080)

Maureen O'Connor
Chief Justice

APPENDIX D
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STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

JUDGMENT ENTRY

SUSAN LLOYD,

Plaintiff-Appellant,

CASE NO. 2019-P-0080

- vs -

JOSHUA THORNSBERY, et al.,

Defendants-Appellees.

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgments of the Portage County Court of Common Pleas are affirmed.

Costs to be taxed against appellant.

Appellee, Amanda Shuherk's, motion for dismissal is denied.

Cynthia Westcott Rice

JUDGE CYNTHIA WESTCOTT RICE

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.

APPENDIX G

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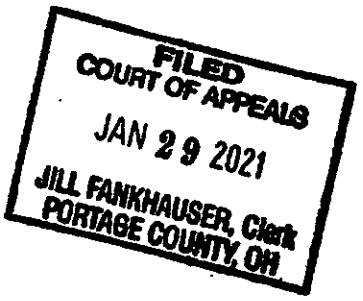
A [illegible] App

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO



SUSAN LLOYD,	:	**OPINION**
Plaintiff-Appellant,	:	
		CASE NO. 2019-P-0080
- vs -	:	
JOSHUA THORNSBERY, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2016 CV 00230.

Judgment: Affirmed.

Susan Lloyd, pro se, P.O. Box 2577, Streetsboro, OH 44241 (Plaintiff-Appellant).

Mark J. Hanna, P.O. Box 301, Kent, OH 44240 (For Defendants-Appellees, C and N Forestry, Cindy Simcox, and Connor Zanoskar).

Jason A. Whitacre, Flynn, Keith & Flynn, 214 South Water Street, Kent, OH 44240 (For Defendants-Appellees, Apryle Davis, Darrel Huber, Eric Siwierka, Jamie Newman, Jason Ortman, Joshua Thornsbery, Nick Balas, Phillip Siwierka, Shelly Ortman, Staci Dalton Liddle, Theresa Giaimo, and Tim Welms).

Lindsay N. Molnar, Perduk & Associates Co., LPA, 3603 Darrow Road, Stow, OH 44224 (For Defendants-Appellees, Michael Szabo and Sandi Szabo).

Craig G. Pelini, Pelini, Campbell & Williams, LLC, 8040 Cleveland Avenue, NW, Suite 400, North Canton, OH 44720 (For Defendants-Appellees, Justin Smialek and Pam Wilms).

Daniel Bennett, pro se, 119 Ebersole Road, Fredericktown, OH 43019 (Defendant-Appellee).

Harley Angel a.k.a. Robin White, pro se, 10254 Brosius Road, Garrettsville, OH 44231 (Defendant-Appellee).

APPENDIX G

Amanda Shuherk, pro se, 08577 County Road C, Bryan, OH 43506 (Defendant-Appellee).

David Trussel, pro se, 6412 Linda Lane, Ravenna, OH 44266 (Defendant-Appellee).

Frank Chlad, pro se, 10122 William Henry Drive, Streetsboro, OH 44241 (Defendant-Appellee).

Jaird Kendzior, pro se, 1094 Moneta Avenue, Aurora, OH 44202 (Defendant-Appellee).

Marty Kendzior, pro se, 6576 Munsell Road, Howell, MI 48843 (Defendant-Appellee).

Rebecca Schaffer, pro se, 6412 Linda Lane, Ravenna, OH 44266 (Defendant-Appellee).

Sebastian Dzialuk, pro se, 7085 Seven Hills Boulevard, Seven Hills, OH 44131 (Defendant-Appellee).

Sue Whitlam, pro se, 466 Brentwood Avenue, Kent, OH 44240 (Defendant-Appellee).

William Taylor, pro se, 2122 Gates Avenue, Streetsboro, OH 44241 (Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Susan Lloyd, pro se, appeals six Judgment Entries or Orders of the Portage County Court of Common Pleas, which generally denied Ms. Lloyd's post-judgment motions and granted various defendant-appellees' motions. For the reasons discussed herein, the judgments are affirmed.

{¶2} In January 2016, Ms. Lloyd purchased a house on Dorothy Drive in Streetsboro, Ohio. There was immediate conflict between her and her next-door neighbor, Joshua Thornsbery, the primary appellee herein. The dispute began when Mr. Thornsbery's dogs relieved themselves on her property. It escalated when Mr. Thornsbery removed trees Ms. Lloyd believes were located, at least partially, on her property. The conflict was further aggravated by Mr. Thornsbery and his neighbors

holding large bonfires and smoking, which aggravated Ms. Lloyd, who uses oxygen. Eventually, Ms. Lloyd built a fence between the two properties, put up security cameras, and posted "no smoking, oxygen in use" signs. Several times, Ms. Lloyd called the authorities on Mr. Thornsbery, once resulting in a citation for the illegal burning of untreated wood. Mr. Thornsbery, in return, posted his own security cameras, continued to hold bonfires in his backyard, and he and his friends, the other defendant-appellees herein, posted about Mr. Thornsbery's "neighbor" pejoratively on Facebook.

{¶3} Ms. Lloyd filed a complaint against Mr. Thornsbery and his friends in March 2016. Several motions for a more definite statement were granted and, ultimately, Ms. Lloyd's fourth amended complaint alleged 101 claims for relief against 26 defendants. Numerous parties were dismissed at various times throughout the underlying proceedings. The jury found in favor of certain defendants on 11 claims for relief; the trial court granted directed verdict for 11 additional claims for relief in favor of certain defendants. The remaining claims for relief appear to have not been pursued at trial and no objection was made to their exclusion during trial, nor on appeal. After trial, Ms. Lloyd's counsel, Attorney Hull, was permitted to withdraw his representation. Ms. Lloyd filed the instant appeal, pro se, alleging thirteen assignments of error.

{¶4} Additionally, shortly after trial, several defendant-appellees filed motions for sanctions against Ms. Lloyd and Attorney Hull. The motion for sanctions against Attorney Hull was dropped but the motion for sanctions against Ms. Lloyd were ultimately granted. Ms. Lloyd appealed this decision in appellate case no. 2019-P-0108, also now before this court.

{¶5} For ease of disposition and clarity, we address certain assignments of error out of order. Preliminarily, we note that Ms. Lloyd argues for the applicability of the Federal Rules of Civil Procedure (FRCP) throughout her appeal. However, as Ms. Lloyd filed her complaint in state court, the Ohio Rules of Civil Procedure are applicable, not the FRCP. Fed.R.Civ.P. 1 ("These rules govern the procedure in all civil actions and proceedings in the United States *district* courts * * *." (Emphasis added.) However, as the Ohio Rules of Civil Procedure are often closely analogous to the FRCP, and in the interest of justice, alleged violations of the FRCP will be construed as if alleged to be violations of their Ohio counterparts.

{¶6} Except as noted, each of Ms. Lloyd's assignments of error are reviewed for an abuse of discretion. The term "abuse of discretion" is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record. *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). An abuse of discretion may be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *State v. Figueroa*, 11th Dist. Ashtabula No. 2016-A-0034, 2018-Ohio-1453, ¶26, citing *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, ¶15 (8th Dist.).

{¶7} Ms. Lloyd's first assignment of error states:

{¶8} The trial court committed an abuse of discretion and reversible error occurred by assigning Thomas Pokorny to case 2016CV00230 against Guidelines for Assignment of Judges for Supreme Court of Ohio Rules 2.2B, 2.3, 2.3A, 2.3B, 2.3C, 5.1A, 5.3A, Rules of Superintendence Rule[ ]36.019 and 28USC453 and section 5 of article VI of the US Constitution. [sic]

{¶9} Ms. Lloyd alleges error in the assignment of Judge Pokorny to hear her case after Judge Doherty recused herself, citing noncompliance with the Supreme Court of Ohio's Guidelines for Assignments of Judges and the Rules of Superintendence.

{¶10} Preliminarily, the Supreme Court of Ohio's Guidelines for Assignments of Judges have not been adopted as rules pursuant to Article IV, Section 5 of the Ohio Constitution and are "not binding on Ohio courts." *Forsyth v. Feinstein*, 2d Dist. Clark No. 99-CA-66, 2000 WL 192298, *3 (Feb.18, 2000); *J.P. v. M.H.*, 9th Dist. Lorain No. CV 18CA011450, 2020-Ohio-13, ¶12. "Although it may be the best practice to adhere to these guidelines, a failure to do so is not reversible error." *Id.* Likewise, this court has held that the Rules of Superintendence, "'are not the equivalent of rules of procedure and have no force equivalent to a statute. They are purely internal housekeeping rules which are of concern to the judges of the several courts but create no rights in individual defendants.'" *Habo v. Khattab*, 11th Dist. Portage No. 2012-P-0117, 2013-Ohio-5809, ¶84, quoting *State v. Gettys*, 49 Ohio App.2d 241, 243, (3d Dist.1976).

{¶11} More importantly, Ms. Lloyd filed four affidavits of disqualification against Judge Pokorny with the Supreme Court of Ohio. The Supreme Court denied each affidavit, finding Judge Pokorny to be qualified, and ultimately warning Ms. Lloyd that continued filings of affidavits for disqualification may result in sanctions against her. Critically, this court lacks the jurisdiction to review the appointment of a visiting judge so appointed by the Supreme Court of Ohio. *See Nolan v. Nolan*, 11 Ohio St.3d 1 (1984), syllabus ("Absent extraordinary circumstances, such as an intervening decision by the Supreme Court, an inferior court has no discretion to disregard the mandate of a superior court in a prior appeal in the same case.").

{¶12} Further, Ms. Lloyd blanketly asserts that Judge Pokorny has not taken an oath of office, violating 28 U.S.C. 453. This statute, however, applies to "judges of the United States," that is, federal judges. Even if we were to apply R.C. 3.23, which provides the oath of office required for Ohio judges, except for justices of the supreme court, nothing in the record demonstrates Judge Pokorny has not taken an oath of office.

{¶13} Finally, as to Ms. Lloyd's argument that the certificate of assignment was not promptly entered into the docket, we note that this court has previously held that "even though it may be better practice for courts to put a copy of the certificate of assignment in each file handled by the visiting judge, failure to do so does not constitute reversible error." *State v. Corradetti*, 11th Dist. Lake No. 2001-L-092, 2002-Ohio-6577, ¶12. Here, the certificate of assignment was entered into the docket; the court's failure to do so more promptly, while not best practice, likewise does not result in reversible error.

{¶14} Ms. Lloyd's first assignment of error is without merit.

{¶15} Ms. Lloyd's second assignment of error states:

> {¶16} The trial court committed reversible error and abuse of discretion by allowing Hull to withdraw as Lloyd[']s attorney in violation of local rule 20.04. [sic]

{¶17} Ms. Lloyd argues that her counsel failed to abide by Portage County Court of Common Pleas Local Rule 20.04 and thus her counsel should not have been permitted to withdraw.

{¶18} Loc.R. 20.04, as effective during these proceedings[1], stated:

> {¶19} Application for leave to withdraw as trial attorney in a civil case shall be made by written motion filed with the Clerk, with copies served upon all other trial attorneys in the case in accordance with these

1. The effective date of the Portage County Local Rules in effect at the time of these proceedings was June 21, 1993; they have since been updated effective February 1, 2020, eliminating, inter alia, the certified mailing requirement and opportunity for hearing.

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> rules and Civil Rule 5. The motion may be heard within ten (10) days of filing by the Judge. Written notice of such application shall be given to the client of the trial attorney seeking to withdraw, by certified mail, return receipt requested, stating the time when and before which Judge such application will be made. If such application is granted and the client does not appear at the hearing, the trial attorney, if permitted to withdraw, shall notify the client by certified mail, return receipt requested, to secure a new trial attorney within such time as may be designated by the Court. A copy of such notice, together with the order authorizing withdrawal and the certified mail shall be filed in the case with a copy provided to the assignment commissioner.

{¶20} First, these Local Rules do not require a hearing; instead, "the motion *may* be heard...." (Emphasis added.) *Id.* Second, violations of Local Rules do not generally constitute grounds for reversal. *See Cart v. Fed. Natl. Mtge. Assoc.*, 11th Dist. Ashtabula No. 2011-A-0059, 2012-Ohio-2241, ¶49; *Yoel v. Yoel*, 11th Dist. Lake No. 2009-L-063, 2012-Ohio-643, ¶40; *Allen v. Allen*, 11th Dist. Trumbull No. 2009-T-0070, 2010-Ohio-475, ¶29-33. This conclusion is made all the more reasonable under these circumstances because Ms. Lloyd admits that her attorney notified her of his intent to withdraw, albeit via email. The purpose of Loc.R. 20.04, notice to the party, was clearly met as Ms. Lloyd herself notes that she received the email.

{¶21} Furthermore, Attorney Hull represented Ms. Lloyd throughout most of these proceedings and through the end of the trial. He was granted leave to withdraw on July 16, 2019, after the Court granted a directed verdict to Nick Balas, Phillip Siwierka, Timothy Welms, Eric Siwierka, and Joshua Thornsbery, and after the jury returned a verdict in favor of the remaining defendants, though before the court journalized the verdict. After the court journalized the jury's verdict, Ms. Lloyd filed several post-judgment motions and her appeal pro se. She does not argue any way in which she was disadvantaged by his withdrawal. In fact, we note that throughout the proceedings, Ms. Lloyd frequently filed motions with the court pro se, despite being represented by counsel.

{¶22} Finally, insofar as Ms. Lloyd argues her Constitutional right to counsel was violated, we note that the Sixth Amendment to the United States Constitution and Section 10, Article I, of the Ohio Constitution, to which she alludes, refers to the right of a *criminal* defendant to be represented. Sixth Amendment to the United States Constitution ("in all *criminal* prosecutions, the accused shall enjoy the right * * * to have the assistance of counsel for his defense") (emphasis added); Section 10, Article I, Ohio Constitution ("*the party accused* shall be allowed to appear and defend in person and with counsel") (emphasis added). However, Ms. Lloyd brought a civil suit; in this case, she is a civil plaintiff, not a criminal defendant. There is generally no right to have counsel appointed in civil cases, with exceptions usually involving either involuntary psychiatric commitment or parental custody, when the party is indigent. *See Belknap v. Moss*, 11th Dist. Portage No. 2002-P-0128, 2005-Ohio-1255, ¶15; *Goldfuss v. Davidson*, 79 Ohio St.3d 116, 126 (1997) (Cook, J., concurring in judgment only) ("Unlike a criminal defendant, a civil litigant has no constitutional right to the effective assistance of counsel."). Ms. Lloyd hired several attorneys during the course of her civil suit; she does not argue she is indigent nor explain why after Attorney Hull's withdrawal she could not hire new counsel. In this case, Ms. Lloyd did not have a constitutional right to have counsel appointed to her.

{¶23} Accordingly, Ms. Lloyd's second assignment of error is without merit.

{¶24} Ms. Lloyd's thirteenth assignment of error states:

> {¶25} Trial court committed reversible error and abuse of discretion by refusing to disqualify Jason Whitacre, Scott Flynn and Flynn Keith and Flynn (T.d.302, Paragraph 1) [sic]

{¶26} Under this assignment of error, Ms. Lloyd asserts that Attorney Jason Whitacre, counsel for Mr. Thornsbery and several other defendants, had a conflict of interest that disqualified him from representing his clients in this case. She does not

allege that she was in an attorney-client relationship with Mr. Whitacre or his firm, Flynn Keith & Flynn, but argues that an unsolicited message she sent to Attorney Flynn advised them of the "past legal issues" of Attorney Hanna, counsel for other parties hereto, created a conflict of interest.

{¶27} Under Prof.Cond.R. 1.7, a lawyer may be required to stop representing a client if there is a substantial risk that the lawyer's ability to "consider, recommend, or carry out an appropriate court of action for that client will be materially limited by the lawyer's * * * own personal interests." *See also, Lytle v. Matthew*, 8th Dist. Cuyahoga No. 104622, 2017-Ohio1447, ¶23. "Typically, courts do not disqualify an attorney on the grounds of conflict of interest unless there is (or was) an attorney-client relationship between the party seeking disqualification and the attorney the party seeks to disqualify." *Morgan v. N. Coast Cable Co.*, 63 Ohio St.3d 156, 159 (1992).

{¶28} Ms. Lloyd, on her own initiative, searched the public records to find another case involving Attorney Hanna. In that case, Attorney Hanna was being evicted; she was not a party to that case. Ms. Lloyd sent an email to Attorney Flynn, the attorney of record for the evicting plaintiff. In her email, Ms. Lloyd disparaged Attorney Hanna and offered negative testimony about his character, which incidentally was unnecessary and irrelevant to the matter of eviction. Attorney Flynn replied, politely thanking her for the email and indicating that he would review the public records available in this case. He later provided an affidavit attesting he did not review the public record she referenced.

{¶29} Attorney Whitacre, though at the same firm as Attorney Flynn, attested that he did not read Ms. Lloyd's email to Attorney Flynn. Moreover, Ms. Lloyd attached an unredacted copy of her email to Attorney Flynn to her motion, which made it a matter of

public record, negating any argument that she intended anything in that email to remain confidential.

{¶30} Ms. Lloyd did not seek representation from Attorney Flynn in any matter, she did not meet with any attorney from that office, and Attorney Flynn did not offer her legal advice. Her unsolicited email disparaging third parties does not create an attorney-client relationship. Thus, the trial court did not err in finding no conflict existed and denying her motion for disqualification.

{¶31} Accordingly, Ms. Lloyd's thirteenth assignment of error is without merit.

{¶32} Her tenth assignment of error states:

> {¶33} Trial court committed reversible error and an abuse of discretion by not releasing audio of Lloyd[']s trial after Pokorny ordered it to be released and Lloyd is entitled to audio violating *Rule 11 of Superintendence, Slagle V Rogers and the Sunshine Laws(T.d. 434)* [sic]

{¶34} On August 20, 2019, Ms. Lloyd filed a motion to release audiotape of the June 17 to 21, 2019 trial; three days later she filed a second request. In each request, she accuses the Portage County Court of Common Pleas and Judge Doherty's court reporter of altering a previous transcript. On August 30, 2019, the court granted the release of the audio. On October 31, 2019 several defendants filed a motion to vacate the court's order granting release of the audio transcript, on the grounds that the transcript likely contains audio for all parties that is protected by attorney-client privilege and the attorney work-product doctrine, unless the audio transcript can be scrubbed of all privileged discussions. On November 8, 2019 the court vacated its earlier order, finding that the recording was "continuous and not limited to 'on the record' matters."

{¶35} On appeal, Ms. Lloyd argues (1) the court erred by denying that request citing R.C. 149.43; (2) that the transcript is being provided at a cost in excess of that

permitted by *Slagle v. Rogers*, and; (3) that pursuant to R.C. 149.43(C)(1), she is entitled to $1,000 in damages for the delay in access to these public records. However, the appropriate vehicle to allege a violation of R.C. 149.43 is set forth in Section (C)(1):

> {¶36} If a person allegedly is aggrieved by the failure of a public office or the person responsible for public records to promptly prepare a public record and to make it available to the person for inspection in accordance with division (B) of this section or by any other failure of a public office or the person responsible for public records to comply with an obligation in accordance with division (B) of this section, the person allegedly aggrieved may do only one of the following, and not both:
>
> {¶37} (a) File a complaint with the clerk of the court of claims or the clerk of the court of common pleas under section 2743.75 of the Revised Code;
>
> {¶38} (b) Commence a mandamus action to obtain a judgment that orders the public office or the person responsible for the public record to comply with division (B) of this section * * *.

{¶39} Thus, insofar as Ms. Lloyd asserts a violation of R.C. 149.43, this appeal is not the appropriate vehicle by which to bring her grievance. *See also State ex rel. Slagle v. Rogers*, 103 Ohio St.3d 89, 2004-Ohio-4354, (reviewing the appellate court's grant of a writ of mandamus for an alleged violation of R.C. 149.43.) Furthermore, as stated under Ms. Lloyd's first assignment of error, the Rules of Superintendence do not create individual rights.

{¶40} Accordingly, Ms. Lloyd's tenth assignment of error is without merit.

{¶41} Her third assignment of error states:

> {¶42} The trial court committed reversible error and an abuse of discretion by denying Lloyd default judgment in violation of FRCP 55a and Local Rules 11.04 and 9.01 (T.d. 302, Paragraph 2))(T.D. 344) [sic]

{¶43} FRCP 55a states: "When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by

affidavit or otherwise, the clerk must enter the party's default." As previously noted, the Ohio Rules of Civil Procedure, not the Federal Rules of Civil Procedure, apply in this case. Civ.R. 55 states in pertinent part:

> {¶44} (A) Entry of judgment. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, the party entitled to a judgment by default shall apply in writing or orally to the court therefor * * *. If the party against whom judgment by default is sought has appeared in the action, he (or, if appearing by representative, his representative) shall be served with written notice of the application for judgment at least seven days prior to the hearing on such application. * * *.
>
> {¶45} (B) Setting aside default judgment. If a judgment by default has been entered, the court may set it aside in accordance with Rule 60(B).
>
> {¶46} (C) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(C).

{¶47} Preliminarily, we note that contrary to Ms. Lloyd's argument, Loc.R. 9.01 and 11.04 are inapplicable to this assignment of error, and as discussed under her second assignment of error, violations of Local Rules do not generally constitute grounds for reversal.

{¶48} Further, Ms. Lloyd argues she was entitled to default judgment against all defendants except Trussel and Schaffer because, she argues, the other defendants failed to timely answer the complaint. Though Ms. Lloyd's fourth amended complaint contained 101 claims for relief against 26 defendants, most of the claims for relief and several defendants were dismissed or granted directed verdict. Ultimately, the court provided the jury instructions on twelve claims for relief against five defendants, to wit:

{¶49} Eric Siwierka – Claim of Nuisance

{¶50} Phillip Siwierka – Claim of Nuisance

{¶51} Joshua Thornsbery – Claims of Nuisance, Trespass-Destruction of Timber, Defamation, Invasion of Privacy, and Intentional Infliction of Emotional Distress.

{¶52} Michael Szabo – Claims of Defamation, Invasion of Privacy, and Intention Infliction of Emotional Distress

{¶53} Timothy Welms – Claims of Nuisance and Intentional Infliction of Emotional Distress

{¶54} We limit our review under this assignment of error to the consideration of only these defendants, as the dismissal or directed verdict for the remaining defendants renders her argument under this assignment of error moot as to those defendants.

{¶55} "'The granting of a default judgment * * * is a harsh remedy which should only be imposed when "the actions of the defaulting party create a presumption of willfulness or bad faith."'" *Sericola v. Johnson*, 11th Dist. Trumbull No. 2015-T-0091, 2016-Ohio-1164, ¶18, quoting *Domadia v. Briggs*, 11th Dist. Geauga No. 2008-G-2847, 2009-Ohio-6510, ¶19. "[I]t is a fundamental tenet of judicial review in Ohio that courts should decide cases on the merits." *DeHart v. Aetna Life Ins. Co.*, 69 Ohio St.2d 189, 192 (1982).

{¶56} "It is well-settled that a trial court may permit the filing of an untimely answer where the record contains sufficient evidence of excusable neglect." *State of Ohio Dept. of Dev. v. Matrix Centennial, L.L.C.*, 10th Dist. Franklin No. 14AP-47, 2014-Ohio-3251, ¶26, citing *State ex rel. Lindenschmidt v. Bd. of Commrs. of Butler Cty.*, 72 Ohio St.3d 464, 466 (1995). "'The determination of whether neglect is excusable or inexcusable must take into consideration all the surrounding facts and circumstances, and courts must be mindful of the admonition that cases should be decided on their merits, where possible, rather than procedural grounds.'" *Sericola, supra*, at ¶19, quoting *Lindenschmidt, supra*.

{¶57} Ms. Lloyd filed her first complaint against Joshua Thornsbery March 16, 2016. He answered and filed a counterclaim on April 18, 2016. She added Eric Siwierka, Phillip Siwierka, Michael Szabo, and Timothy Welms in an amended complaint on March 3, 2017. The record reflects that Eric Siwierka was not successfully served immediately. Michael Szabo filed a pro se motion to dismiss on March 15, 2017. That motion was denied. Though he did not file an answer within 14 days, he retained Attorney Hanna to represent him. Attorney Hanna did not file a notice of appearance but began filing on behalf of Michael Szabo in June 2017. Attorney Hanna became hospitalized and incapacitated sometime before the filing of the motion for default judgment.

{¶58} Ms. Lloyd's first motion for default judgment filed through her counsel was on June 3, 2019. It was denied the next day. Shortly thereafter, Eric Siwierka, Phillip Siwierka, and Timothy Welms hired Attorney Whitacre, who was already representing Joshua Thornsbery, to also represent them. Michael Szabo obtained representation from Attorney Molnar, replacing Attorney Hanna. Attorney Molnar filed an answer to the fourth amended complaint on behalf of Michael Szabo the same day she filed her notice of appearance: June 13, 2019. Attorney Whitacre filed an answer on behalf of his clients on June 17, 2019. This was not his first filing; he had filed several motions and briefs since he filed his notice of appearance in April 2019. Thus, the record reflects that though late, the relevant defendants did file an answer to Ms. Lloyd's fourth amended complaint.

{¶59} We now consider whether the record contains sufficient evidence of excusable neglect. By the time the notice of default had been filed in June 2019, the case had been pending for three years and had gone through at least two failed mediations. There had been several imperfect services against several defendants. The first three

iterations of the complaint were so vague that three motions for a more definite statement were granted. The initial judge voluntarily recused herself and the Supreme Court of Ohio appointed a visiting, retired judge to preside over the case. The final, fourth amended complaint was nearly 500 pages, plus nearly 300 pages of exhibits, and contained 101 claims for relief against 26 defendants. Considering that judgment on the merits is highly preferable to the harsh granting of default judgment, and considering the lengthy, voluminous, and convoluted procedural history, we find there was sufficient evidence in the record to show excusable neglect in this case.

{¶60} Moreover, Ms. Lloyd, through counsel, filed her first motion for default judgment nearly a year after she filed her fourth amended complaint. She never moved to strike any of the defendants' filings for untimeliness or because they were in default. She instead continued to reply to the filings. By her responses, Ms. Lloyd may be deemed to have recognized and accepted the untimely filings.

{¶61} In light of the foregoing, we find the trial court did not err in denying Ms. Lloyd's motions for default judgment. Accordingly, Ms. Lloyd's third assignment of error is without merit.

{¶62} Ms. Lloyd's fourth assignment of error states:

{¶63} The trial court committed reversible error and an abuse of discretion by violating Rules of Superintendence 5D, 40 A3,[ ]30B.

{¶64} Under her fourth assignment of error, Ms. Lloyd states the issue for review as: "Did the trial court commit reversible error and abuse of discretion by violating the Rules of Superintendence?" As we have stated above, the rules of superintendence do not create individual rights as they are not the equivalent of rules of procedure and have no force equivalent to a statute. They are purely internal housekeeping rules which are of

concern to the judges of the several courts. Thus, we answer her issue for review in the negative.

{¶65} Ms. Lloyd also argues the judge was required to consider the feasibility of recording testimony as permitted by FRCP 30(B). As stated before, the Ohio Rules of Civil Procedure govern this case, not the FRCP. Moreover, even if the FRCP were applicable, FRCP 30 pertains to "depositions by oral examination." She does not, however, allege error in regard to depositions.

{¶66} Accordingly, Ms. Lloyd's fourth assignment of error is without merit.

{¶67} Ms. Lloyd's seventh assignment of error states:

{¶68} The trial court committed reversible error and an abuse of discretion by denying Lloyd discovery (T.d. 269 Paragraph 4)(T.d. 302, Paragraph 4) [sic]

{¶69} Under this assignment of error, Ms. Lloyd asserts that she is entitled to Mr. Thornsbery's social media usernames and passwords, citing *Forinash v. Weber*, 6th Dist. Sandusky No. S-16-019, 2017-Ohio-1076. However, her reliance on *Forinash* is misplaced. The Sixth District Court of Appeals in *Forinash* did not discuss the accessibility of Facebook passwords and usernames to parties to a defamation suit. Instead, *Forinash* reversed a trial judge's award of nominal damages, which was based on the assumption that a Facebook post would primarily be seen in the county in which it was posted, finding that assumption erroneous. The court remanded for the reexamination of damages. It also affirmed the decision of the lower court finding there was no spoliation of evidence when defendant deleted the relevant post upon receiving the complaint when the plaintiff failed to file a protection order and the remedy sought was the removal of the Facebook post. Those facts are inapplicable to the case at hand. Therefore, Ms. Lloyd has provided no law in support of her argument that she is entitled

to the username and password of Mr. Thornsbery's Facebook page. "'It is the duty of the appellant, not the appellate court, to construct the legal arguments necessary to support the appellant's assignments of error.'" *Deutsche Bank Natl. Tr. Co. v. Sopp,* 10th Dist. Franklin No. 14AP-343, 2016-Ohio-1402, ¶6, quoting *Bond v. Village of Canal Winchester*, 10th Dist. Franklin No. 07AP-556, 2008-Ohio-945, ¶16.

{¶70} Moreover, Ms. Lloyd attached almost 300 pages of exhibits, most of which were pictures of the defendants' Facebook posts. She alleges that the parties have since made their pages private, but her complaint was based on posts made by defendants prior to the complaint. At the time of the complaint, their pages were not private, and Ms. Lloyd took pictures of the relevant posts and attached them as exhibits. As such, we fail to see how Ms. Lloyd was prejudiced by the trial court's denial of access to the defendants Facebook usernames and passwords.

{¶71} Additionally, Ms. Lloyd argues that she "was never given the opportunity to conduct discovery on the majority of the Defendants as [Judge] Doherty was supposed to amend the case management plan at status conference in July 2017 but that hearing never took place." She argues that she was denied a constitutional right to discovery. However, "the denial of additional time to conduct discovery does not rise to the level of a due process violation because '[t]here is no general constitutional right to discovery.'" *Ditech Financial, LLC v. Glob. Capital Partners*, 10th Dist. Franklin No. 17AP-470, 2018-Ohio-1998, ¶11, quoting *Midland Steel Prods. Co., v. Internatl. Union, United Auto., Aerospace and Agricultural Implement Workers, Local 486,* 61 Ohio St.3d 121, 131 (1991).

{¶72} Moreover, her argument that she was never given the opportunity to conduct discovery is not supported by the record. When Ms. Lloyd sought leave to file an amended complaint in February 2017, the discovery deadline was extended an additional two weeks to March 31, 2017. She filed her amended complaint on March 3, 2017 and filed an additional request to extend discovery just before the deadline. A hearing was held on March 31, 2017, the day of the discovery deadline, but the order issued following that hearing did not address the discovery deadline. There is nothing in the record which shows that Ms. Lloyd or her attorney requested that the discovery extension be addressed in that hearing. Regardless, Ms. Lloyd did, in fact, continue to conduct discovery, for example, by serving Requests for Admissions on May 5, 2017. Moreover, neither she nor her attorney pursued a follow up on the request for a new case management plan or the extension for over two years.

{¶73} In June 2019, Ms. Lloyd filed a motion for writ of mandamus in this court seeking, inter alia, a writ ordering the trial court to rule on her motion to extend discovery. Before she voluntarily withdrew that motion, this court denied her "Emergency Motion for Stay" in a June 14, 2019 judgment entry. In that entry, we noted that "[a]lthough [Lloyd] maintains that she could not conduct discovery over this two-plus-year period due to the March 31, 2017 deadline, she concedes her motion to extend was unopposed *and* the docket demonstrates she filed numerous requests for admissions in May and June 2017. It is unclear, irrespective of the March 2017 deadline, why [Lloyd] did not attempt to seek further discovery throughout the next two-year period, especially when previous attempts were unopposed." We further noted that the procedural history in the record "certainly suggest[s]" Lloyd was prepared to proceed with trial. We see no reason to now deviate

from that prior finding. In light of the foregoing, we find the trial court did not abuse its discretion in denying her motion to extend discovery.

{¶74} Finally, Ms. Lloyd also states that "Rule26(a)(2) prevents an attorney from taking undue advantage of an adversary." We need not decipher which rule she is citing as she does not assert in any way that any attorney took undue advantage of any adversary.

{¶75} Accordingly, Ms. Lloyd's seventh assignment of error is without merit.

{¶76} Her fifth assignment of error states:

{¶77} The trial court committed reversible error and an abuse of discretion by granting directed verdict?[ ](T.d. 332)(T.d. 343) [sic]

{¶78} Ms. Lloyd argues that the trial court erred by granting directed verdicts against several defendants after her counsel failed to mention them by name in his opening arguments. She also faults the court for giving her counsel 20 minutes for opening statements. A trial court's decision on a motion for directed verdict presents a question of law, which an appellate court reviews de novo. *Groob v. Keybank*, 108 Ohio St.3d 348, 2006-Ohio-1189, ¶14.

{¶79} Initially, we note that Ms. Lloyd's counsel was given the opportunity of requesting additional opening statement time and declined:

{¶80} THE COURT: Okay. 20 minutes? More, you need more?

{¶81} MR. HULL: No.

{¶82} THE COURT: 20 minute limit? I mean, I ordinarily don't do that, but we have so many parties here, I'm trying to keep the trial within a reasonable time for us to conclude, so, okay. Good.

{¶83} The limit was applied equally to all parties and Ms. Lloyd's counsel declined additional time. Therefore, we find no error with the trial court's limiting the opening statements.

{¶84} Ohio Civ. R. 50(A)(4), not the Federal Rules of Civil Procedure as stated earlier, governs direct verdicts in this case and states:

> {¶85} When a motion for a directed verdict has been properly made, and the trial court, after construing the evidence most strongly in favor of the party against whom the motion is directed, finds that upon any determinative issue reasonable minds could come to but one conclusion upon the evidence submitted and that conclusion is adverse to such party, the court shall sustain the motion and direct a verdict for the moving party as to that issue.

{¶86} "[A] trial court may grant a motion for directed verdict made at the close of a party's opening statement only when that statement indicates that the party will be unable to sustain its cause of action or defense at trial." *Parrish v. Jones*, 138 Ohio St.3d 23, 2013-Ohio-5224, ¶10. We are cognizant that "'[a] trial court should exercise great caution in sustaining a motion for a directed verdict on the opening statement of counsel; it must be clear that all the facts expected to be proved, and those that have been stated, do not constitute a claim for relief or a defense, and the statement must be liberally construed in favor of the party against whom the motion has been made.'" *Id.* at ¶25, quoting *Brinkmoeller v. Wilson*, 41 Ohio St.2d 223 (1975). Directed verdict may only be granted following opening statements when the statements indicate that the party will be unable to sustain its claim for relief or defense at trial. *Id.*

{¶87} "The trial court does not commit error in granting a defendant's motion for directed verdict, made at the close of plaintiff's opening statement, 'if, engaging in every reasonable inference from facts favorable to the party against whom the motion is directed, the proposed proof would not sustain a claim upon which relief could be

granted.'" *U.S. Aviation Underwriters, Inc. v. B.F. Goodrich Co.*, 149 Ohio App.3d 569, 2002-Ohio-5429, ¶13 (9th Dist.), quoting *Phillips v. Borg–Warner Corp.*, 32 Ohio St.2d 266, 268 (1972). In short, "to sustain the motion, 'it must be clear that all the facts expected to be proved, and those that have been stated, do not constitute a claim for relief or a defense, and the statement must be liberally construed in favor of the party against whom the motion has been made.'" *Lippy v. Soc. Natl. Bank*, 100 Ohio App.3d 37, 41 (11th Dist.1995), quoting *Brinkmoeller, supra*, at syllabus.

{¶88} Therefore, the issue to be determined is whether Ms. Lloyd's opening statement failed to state a claim against seventeen defendants. After careful review of the record and construing the facts in the light most favorable to Ms. Lloyd, we conclude her opening statement failed to state the necessary claims, as she altogether failed to mention any element of any claim against seventeen defendants.

{¶89} Several Ohio courts have upheld directed verdicts after opening statements when the nonmoving party failed to mention a critical element of a claim for relief. *See, e.g., Hicks v. Garrett*, 5th Dist. Stark No. 2011CA00109, 2012-Ohio-3560, ¶68 (granted directed verdict was not error in a negligent hiring/supervising case when appellant failed to argue in opening arguments that appellee's actions were anything other than independent self-serving acts which in no way facilitated or promoted the business of the other appellees.); *Escort Transport, Inc. v. United Trans., Inc.*, 10th Dist. Franklin No. 80AP-574, 1980 WL 353879, *2.

{¶90} Moreover, Ms. Lloyd's reliance on her complaint is misplaced. "Although the trial court is not *required* to consider the pleadings when ruling on a Civ.R. 50(A)(1)

motion, in liberally construing the motion in favor of the opposing party, it *may* do so." (Emphasis original.) *Parrish, supra.*

{¶91} Accordingly, Ms. Lloyd's fifth assignment of error is without merit.

{¶92} Her sixth assignment of error states:

> {¶93} Trial court committed reversible error and abuse of discretion by denying Lloyd a new trial,[ ]mistrial and her Motion for Judgment Notwithstanding the verdict in violation of FRCP 50, 59 and local rule 8.03 (T.d. 341)(T.d. 365, Paragraph 1) [sic]

{¶94} Under her sixth assignment of error, Ms. Lloyd's only argument is that the trial court erred by failing to hold a hearing before denying her a motion for a new trial, mistrial, and motion for judgment notwithstanding the verdict.

{¶95} As stated above, the Federal Rules of Civil Procedure are not applicable here. The equivalent Ohio Rules of Civil Procedure relevant here are Civ.R. 50 and Civ.R. 59. However, neither rule requires the court to hold a hearing before ruling on these motions. Moreover, as we discussed under her second assignment of error, violations of Local Rules do not generally constitute grounds for reversal.

{¶96} Accordingly, Ms. Lloyd's sixth assignment of error is without merit.

{¶97} Her eighth assignment of error states:

> {¶98} The trial court committed reversible error and an abuse of discretion by violating FRCP Rules for admissibility of evidence and Local Rule 7.06[.]

{¶99} Ms. Lloyd argues that the trial court erred by not allowing the depositions or testimony of her doctors, nor body camera footage, to be admitted. She argues the court violated Loc.R. 7.06, which stated at the time of trial in pertinent part:

> {¶100} * * * An objection to a video tape deposition shall be submitted to the Court in writing at least three (3) days before trial. On separate paper, counsel shall cite his/her authority for the objection.

{¶101} Ms. Lloyd attempted to enter into evidence a deposition of Dr. Banzoic taken in a separate Portage County Common Pleas Court case, 2017CV00390. She argues it should be admitted because in that case Mr. Thornsbery was a defendant represented by Attorney Hanna, and in this case, Mr. Thornsbery is a defendant and Attorney Hanna is an attorney of record in this case. Mr. Thornsbery argues Dr. Banzoic's testimony is hearsay and was properly excluded.

{¶102} Hearsay "is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid. R. 801. Hearsay is not admissible unless it falls under an exception listed in Evid.R. 803 or 804.

{¶103} Ms. Lloyd does not argue this testimony falls under any hearsay exception, nor that Dr. Banzoic was unavailable to testify. To the contrary, Ms. Lloyd requested a continuance to call Dr. Banzoic as a witness. We find the testimony of Dr. Banzoic from a prior case does not fall under any hearsay exception. Accordingly, the court did not err by refusing to admit it.

{¶104} Ms. Lloyd also attempted to enter into evidence body camera footage. The court ordered that copies of all exhibits, including videos, be provided to opposing counsel. Attorney Hull sent an email to defense counsel entitled "body cam footage" but there was no video attached. When he attempted to enter the video into evidence at trial, opposing counsel objected on the basis that they had not seen the footage before. Ms. Lloyd's counsel argued that it was public record they could have accessed and that the defendants should know what was on that video because they were the ones being recorded.

{¶105} However, it is immaterial that the footage was public record or that the defendants were on the video. It was Ms. Lloyd's exhibit and she failed to follow the court's instructions to provide that evidence to opposing counsel. Opposing counsel properly objected to its introduction without the opportunity to view it first. The trial court did not err in sustaining the objection.

{¶106} Accordingly, Ms. Lloyd's eighth assignment of error is without merit.

{¶107} Her ninth assignment of error states:

> {¶108} The trial court committed reversible error and an abuse of discretion by allowing Whitacre to violate his own orders in regards to Lloyd[']s Motion in Limine under ongoing and heavy objection by Hull[.]

{¶109} Ms. Lloyd filed a motion in limine requesting the defendants be precluded from calling any witnesses, "referencing in any capacity any person, or any knowledge, facts, transactions, occurrences or other happened of any person, other than any party identified on plaintiff's Witness List," and "from using, introducing at [trial] or referencing in any capacity, any document other than those on Plaintiff's Exhibit List." Several defendants objected. The court ruled on the motion on the first day of trial, after asking each defense counsel if they intended to call any witness that are not parties. Each answered in the negative and the court stated: "Then relative to that issue, the motion in limine is granted to the extent that the Defendants may not call witnesses who are not parties."

{¶110} A motion in limine is "'tentative and precautionary in nature, reflecting the court's anticipatory treatment of an evidentiary issue at trial.'" *Brannon v. Austinburg Rehab. & Nursing Ctr.*, 190 Ohio App.3d 662, 2010-Ohio-5396, ¶18 (11th Dist.), quoting *Biro v. Biro*, 11th Dist. Lake Nos. 2006-L-068 and 2006-L-236, 2007-Ohio-3191, ¶18. "A ruling on a motion in limine reflects the court's anticipated treatment of an evidentiary

issue at trial and is a tentative, interlocutory, precautionary ruling." *Orbit Elecs., Inc. v. Helm Instrument Co.*, 167 Ohio App.3d 301, 2006-Ohio-2317, ¶17 (8th Dist.). "'The sustaining of a motion in limine does not determine the admissibility of the evidence to which it is directed. Rather it is only a preliminary interlocutory order precluding questions being asked in a certain area until the court can determine from the total circumstances of the case whether the evidence would be admissible.'" *Id.* at ¶18, quoting *State v. Maurer*, 15 Ohio St.3d 239, 259-260, (1984), fn. 14, quoting Palmer, Ohio Rules of Evidence, Rules Manual (1984) 446.

{¶111} During trial, Attorney Hull objected on the basis of the motion in limine several times, most of which were overruled. Attorney Hull and Ms. Lloyd seemed to operate under the assumption that the motion in limine was granted exactly as Ms. Lloyd requested. However, the record is clear that the motion was granted only to the extent that Defendants could not call witness who were not parties. No defendant did so.

{¶112} Accordingly, Ms. Lloyd's ninth assignment of error is without merit.

{¶113} Her eleventh assignment of error states:

> {¶114} The trial court committed reversible error and an abuse of discretion by not properly instructing the jury on Destruction of Timber and Willful and Wanton claims.

{¶115} Under this assignment of error, Ms. Lloyd argues that the court should have included a jury instruction on destruction of timber, in violation of R.C. 901.51, and "willful and wanton conduct."

{¶116} "An appellate court will reverse a trial court's refusal to give a party's requested jury instructions only if the trial court abused its discretion, and if so, only if that refusal was prejudicial to the complaining party." *Frost v. Snitzer*, 11th Dist. Trumbull No. 2005-T-0090, 2006-Ohio-3882, ¶95, citing *Ballard v. Wal-Mart Stores, Inc.*, 12th Dist.

Warren No. CA98-05-014, 1999 WL 8353 (Jan. 11, 1999). "'Prejudice' will be found only when the alleged error 'cripples the entire jury charge.'" *Frost, supra,* quoting *Jaworowski v. Med. Radiation Consultants*, 71 Ohio App.3d 320, 327-328 (2d Dist.1991). "As a whole, the jury charge must be 'so misleading and prejudicial to induce the erroneous verdict.'" *Frost, supra,* quoting *Cleveland Elec. Illuminating Co. v. Astorhurst Land Co.*, 18 Ohio St.3d 268, 272 (1985). "'If, "taken in their entirety, the instructions fairly and correctly state the law applicable to the evidence presented at trial, reversible error will not be found merely on the possibility that the jury may have been misled."'" *Withers v. Mercy Hosp. of Fairfield*, 12th Dist. Butler No. CA2010-02-033, 2010-Ohio-6431, ¶17, quoting *Silver v. Jewish Home of Cincinnati,* 12th Dist. Warren No. CA2010-02-015, 2010-Ohio-5314, ¶81, quoting *Wozniak v. Wozniak,* 90 Ohio App.3d 400, 410 (9th Dist.1993). *See also Frost, supra.*

{¶117} Preliminarily, we note that Ms. Lloyd does not make any argument that she was prejudiced by the jury instructions. For this reason alone, Ms. Lloyd's arguments under this assignment of error fails.

{¶118} Moreover, at trial, Ms. Lloyd's attorney did not submit proposed jury instructions, though he made several verbal suggestions, which were ultimately rejected. He objected to the instructions on two points: that the court failed to provide a separate instruction on destruction of timber and on "willful and wanton conduct."

{¶119} First, we note that Ms. Lloyd's fourth amended complaint itself does not list "willful and wanton misconduct" as its own separate claim for relief; instead she alleges "negligence with willful and wanton misconduct." Regardless, even if the trial court erred in failing to give a separate instruction on willful and wanton misconduct, Ms. Lloyd would

not be able to show prejudice as the trial court instructed the jury to consider whether any of the defendants' actions were wanton or willfully done, and the jury found in the defendants' favor, not finding willful or wanton misconduct.

{¶120} As to the destruction of timber claim, the court did include instructions on the destruction of timber in the instructions regarding trespass to the jury. The jury found that no defendant had trespassed to destroy timber or otherwise. Thus, Ms. Lloyd would not be able to show prejudice even if we were to find the trial court erred in not including a destruction of timber instruction to the jury.

{¶121} Additionally, Ms. Lloyd alleges Judge Pokorny and at least one juror fell asleep during trial. She does not, however, cite any instance in the record where Ms. Lloyd or her attorney noted on the record that the judge or a juror fell asleep. It is not the duty of an appellate court to search the record for evidence to support an appellant's argument as to an alleged error. *Sopp, supra,* at ¶6. Accordingly, we find no merit to her claims.

{¶122} Ms. Lloyd also faults the court for "having the jury room where they can be heard in the court room." She alleges the jury could be heard laughing from the court room. Even accepting this as true, Ms. Lloyd does not make any argument that she was prejudiced by their laughter. She does not suggest a reason why the jury was laughing; nor is there anything in the record to support her claim. Fatally, she fails to cite any law in support of her argument that the jury room should not be allowed within a certain distance of the court room. As stated under Ms. Lloyd's seventh assignment of error: "It is the duty of the appellant, not the appellate court, to construct the legal arguments

necessary to support the appellant's assignments of error." *Sopp, supra*, quoting *Bond v. Canal Winchester*, 10th Dist. Franklin No. 07AP-556, 2008-Ohio-945, ¶16.

{¶123} Accordingly, Ms. Lloyd's eleventh assignment of error is without merit.

{¶124} Her twelfth assignment of error states:

> {¶125} The trial court committed reversible error and an abuse of discretion by violating FRCP 56 and having Judgement for the Defendants when they admit to fault and there is no disputed facts in this case and there was testimony to support every one of Lloyds claims. [sic]

{¶126} Under this assignment of error, Ms. Lloyd lists every instance where she believes a defendant admitted fault. She presents her interpretation of the evidence presented at trial and ignores any evidence presented to the contrary. Critically, she cites no law other than a reference to FRCP 56, which pertains to summary judgment and, as previously stated, is not applicable in this case. Even applying Ohio's Civil Rules pertaining to summary judgment, she did not move for summary judgment, and cannot raise the issue for the first time on appeal. *See Stores Realty Co., v. City of Cleveland, Bd. of Bldg. Standards and Bldg. Appeals,* 41 Ohio St.2d 41 (1975); *Goldfuss v. Davidson* (1997), 79 Ohio St.3d 116, 121 (1997).

{¶127} Accordingly, Ms. Lloyd's twelfth assignment of error is without merit.

{¶128} In light of the foregoing, the judgments of the Portage County Court of Common Pleas are affirmed. Defendant-appellee, Amanda Shuherk's, motion for dismissal is denied.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.

Appendix (App)

STATE OF OHIO)
)SS.
COUNTY OF PORTAGE)

IN THE COURT OF APPEALS

ELEVENTH DISTRICT

SUSAN LLOYD,

Plaintiff-Appellant,

- vs -

JOSHUA THORNSBERY, et al.,

Defendants-Appellees.

JUDGMENT ENTRY

CASE NO. 2019-P-0108

For the reasons stated in the opinion of this court, appellant's assignments of error are without merit. It is the judgment and order of this court that the judgments of the Portage County Court of Common Pleas are affirmed.

Costs to be taxed against appellant.

Appellee, Amanda Shuherk's, motion for dismissal is denied.

Cynthia Westcott Rice

JUDGE CYNTHIA WESTCOTT RICE

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.

APPENDIX H

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

PORTAGE COUNTY, OHIO

SUSAN LLOYD,	:	**OPINION**
Plaintiff-Appellant,	:	
- vs -	:	**CASE NO. 2019-P-0108**
JOSHUA THORNSBERY, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Portage County Court of Common Pleas, Case No. 2016 CV 00230.

Judgment: Affirmed.

Susan Lloyd, pro se, P.O. Box 2577, Streetsboro, OH 44241 (Plaintiff-Appellant).

Mark J. Hanna, P.O. Box 301, Kent, OH 44240 (For Defendants-Appellees, C and N Forestry, Cindy Simcox, and Connor Zanoskar).

Jason A. Whitacre, Flynn, Keith & Flynn, 214 South Water Street, Kent, OH 44240 (For Defendants-Appellees, Apryle Davis, Darrel Huber, Eric Siwierka, Jamie Newman, Jason Ortman, Joshua Thornsbery, Nick Balas, Phillip Siwierka, Shelly Ortman, Staci Dalton Liddle, Theresa Giaimo, and Tim Welms).

Lindsay N. Molnar, Perduk & Associates Co., LPA, 3603 Darrow Road, Stow, OH 44224 (For Defendants-Appellees, Michael Szabo and Sandi Szabo).

Daniel Bennett, pro se, 119 Ebersole Road, Fredericktown, OH 43019 (Defendant-Appellee).

Harley Angel a.k.a. Robin White, pro se, 10254 Brosius Road, Garrettsville, OH 44231 (Defendant-Appellee).

Amanda Shuherk, pro se, 08577 County Road C, Bryan, OH 43506 (Defendant-Appellee).

David Trussel, pro se, 6412 Linda Lane, Ravenna, OH 44266 (Defendant-Appellee).

Frank Chlad, pro se, 10122 William Henry Drive, Streetsboro, OH 44241 (Defendant-Appellee).

Jaird Kendzior, pro se, 1094 Moneta Avenue, Aurora, OH 44202 (Defendant-Appellee).

Marty Kendzior, pro se, 6576 Munsell Road, Howell, MI 48843 (Defendant-Appellee).

Rebecca Schaffer, pro se, 6412 Linda Lane, Ravenna, OH 44266 (Defendant-Appellee).

Sebastian Dzialuk, pro se, 7085 Seven Hills Boulevard, Seven Hills, OH 44131 (Defendant-Appellee).

Sue Whitlam, pro se, 466 Brentwood Avenue, Kent, OH 44240 (Defendant-Appellee).

William Taylor, pro se, 2122 Gates Avenue, Streetsboro, OH 44241 (Defendant-Appellee).

CYNTHIA WESTCOTT RICE, J.

{¶1} Appellant, Susan Lloyd, pro se, appeals six Judgment Entries or Orders of the Portage County Court of Common Pleas, which generally denied Ms. Lloyd's post-judgment motions and granted various defendant-appellees' motions and sanctions against Ms. Lloyd. For the reasons discussed herein, the judgments are affirmed.

{¶2} The underlying case stemmed from a dispute between Ms. Lloyd and her former next-door neighbor, Mr. Thornsbery, regarding, inter alia, his alleged trespassing and removal of trees allegedly located on her property. Ms. Lloyd brought suit against Mr. Thornsbery, the tree removal company, and many of Mr. Thornsbery's friends who posted negative comments about her on Facebook. Ms. Lloyd's fourth amended complaint spanned nearly 500 pages and alleged 101 causes of action against 26 defendants. The case proceeded to a five-day trial by jury. Numerous parties were dismissed at various times throughout the underlying proceedings; the jury found in favor

of certain defendants on 11 causes of action; the trial court granted directed verdict for 11 additional causes of action. After trial but before the court journalized the verdict, Ms. Lloyd's counsel, Attorney Hull, was permitted to withdraw his representation.

{¶3} She appealed various findings and motions pro se in a prior appeal; this court affirmed the trial court's judgments against her in *Lloyd v. Thomsbery,* 11th Dist. Portage No. 2019-P-0080, ____-Ohio-____ ("*Lloyd I*").

{¶4} Additionally, shortly after trial, several defendant-appellees filed motions for sanctions against Ms. Lloyd and Attorney Hull. The motion for sanctions against Attorney Hull was dropped but the motion for sanctions against Ms. Lloyd was ultimately granted. It is primarily from this decision that Ms. Lloyd now appeals, pro se, assigning nine errors.

{¶5} Preliminarily, we note that Ms. Lloyd argues for the applicability of the Federal Rules of Civil Procedure (FRCP) throughout her appeal. However, as Ms. Lloyd filed her complaint in state court, the Ohio Rules of Civil Procedure are applicable, not the FRCP. Fed.R.Civ.P. 1 ("These rules govern the procedure in all civil actions and proceedings in the United States *district* courts * * *." (Emphasis added.) However, as the Ohio Rules of Civil Procedure are often closely analogous to the FRCP, and in the interest of justice, alleged violations of the FRCP will be construed as if alleged to be violations of their Ohio counterparts.

{¶6} Ms. Lloyd's first assignment of error states:

> {¶7} The trial court committed an abuse of discretion and reversible error by placing orders after July 16, 2019 and refusing to vacate them when the case was on appeal and the trial court had no jurisdiction(T.d. 479)(T.d. 486)(T.d. 504)(T.d.505)(T.d. 506)

{¶8} Under her first assignment of error Ms. Lloyd argues the court erred in awarding attorney fees, and that the trial court did not have jurisdiction to enter any orders

after she filed her first appeal on July 16, 2019. In support, she cites *Jay v. Massachusetts Cas. Ins. Co.*, 5th Dist. Stark No. 2009CA00056, 2009-Ohio-4519. Determination of a court's jurisdiction is a question of law we review de novo. *Id.* at ¶6.

{¶9} Though not specifically noted by Ms. Lloyd, the record shows the following orders issued after July 16, 2019 and appealed by Ms. Lloyd:

{¶10} October 10, 2019: an order setting final hearing on defendants' sanctions motions for October 18, 2019.

{¶11} October 18, 2019: order ruling on 33 miscellaneous motions filed, including 28 post-trial motions filed by Ms. Lloyd.

{¶12} October 18, 2019: order overruling motion to dismiss, granting a motion to appear by phone, dealing the record, and ordering parties to submit proposed sanctions orders.

{¶13} November 8, 2019 order sanctioning Ms. Lloyd.

{¶14} Two November 8, 2019 orders awarding attorneys' fees.

{¶15} November 8, 2019 judgment entry vacating the court's prior entry releasing the audio recordings.

{¶16} November 8, 2019 judgment entry overruling two additional motions filed by Ms. Lloyd.

{¶17} "Once an appeal is taken, the trial court is divested of jurisdiction except 'over issues not inconsistent with that of the appellate court to review, affirm, modify or reverse the appealed judgment, such as the collateral issues like contempt * * *.'" *State ex rel. State Fire Marshal v. Curl*, 87 Ohio St.3d 568, 570 (2000), quoting *State ex rel. Special Prosecutors v. Judges, Court of Common Pleas*, 55 Ohio St.2d 94, 97 (1978) and citing *Haller v. Borror*, 107 Ohio App.3d 432, 436 (10th Dist.1995). Even once an appeal is taken, a trial court "may consider collateral issues not related to the merits of the action, such as a motion for sanctions or a motion for criminal contempt." *Middleton v. Luna's*

Restaurant & Deli, L.L.C., 5th Dist. Stark No. 2011-CA-00181, 2012-Ohio-348, ¶11, citing *State ex rel. Hummel v. Sadler*, 96 Ohio St.3d 84, 2002-Ohio-3605, ¶23.

{¶18} And again, "[i]t is well-settled law that a trial court retains jurisdiction over proceedings in aid of execution of its judgments, even while those judgments are on appeal." *Horvath v. Packo*, 6th Dist. Lucas No. L-11-1318, 2013-Ohio-56, ¶16, citing *State, ex rel. Klein v. Chorpening*, 6 Ohio St.3d 3 (1983), citing R.C. 2505.08 ("[A]n appeal does not operate as a stay of execution until a stay of execution has been obtained * * * and a supersedeas bond is executed * * * "). "For this reason, Civ.R. 62(B) affords an appellant the opportunity to stay the judgment pending appeal through the giving of an adequate supersedeas bond." *Horvath, supra.*

{¶19} Here, it is undisputed that there was no stay of appeal, nor did Ms. Lloyd post a supersedeas bond. Moreover, the law is clear that the trial court retained jurisdiction to decide defendants' motion for sanctions, as sanctions are a collateral matter.

{¶20} As to the court's ruling on Ms. Lloyd's motions, Civ.R. 4(B)(2) states, in pertinent part:

> {¶21} **Civil or juvenile post-judgment motion.** In a civil case or juvenile proceeding, if a party files any of the following, if timely and appropriate:
>
> {¶22} (a) a motion for judgment under Civ.R. 50(B);
>
> {¶23} (b) a motion for a new trial under Civ.R. 59;
>
> {¶24} * * *
>
> {¶25} (d) a request for findings of fact and conclusions of law under Civ.R. 52, Juv.R. 29(F)(3), Civ.R. 53(D)(3)(a)(ii) or Juv.R. 40(D)(3)(a)(ii);
>
> {¶26} (e) a motion for attorney fees; or

{¶27} (f) a motion for prejudgment interest,

{¶28} then the time for filing a notice of appeal from the judgment or final order in question begins to run as to all parties when the trial court enters an order resolving the last of these post-judgment filings.

{¶29} If a party files a notice of appeal from an otherwise final judgment but before the trial court has resolved one or more of the filings listed in this division, then the court of appeals, upon suggestion of any of the parties, shall remand the matter to the trial court to resolve the postjudgment filings in question and shall stay appellate proceedings until the trial court has done so. * * *

{¶30} If the trial court had not ruled on the post-judgment motions, this court would have remanded the appeal, staying appellate proceedings until the trial court had ruled on them. Thus, the outcome would have been the same whether or not Ms. Lloyd's appeal was pending. The trial court did not err in entering these post-judgment orders.

{¶31} Accordingly, Ms. Lloyd's first assignment of error is without merit.

{¶32} Her second states:

{¶33} The trial court committed reversible error and abuse of discretion by sealing case 2016CV00230(T.d. 487)

{¶34} Under her second assignment of error, Ms. Lloyd argues the trial court erred by sealing this case. On October 18, 2019, the trial court entered a judgment, stating in part: "Defendants' Motion to Seal the Record is granted." However, on November 8, 2019, the court clarified that order, stating in part: "The Court's entry sealing the record pertains only to names and addresses of jurors and the verdict forms. All other filings, transcripts and exhibits of the case are NOT subject to this order." Thus, the record is not sealed, except for the identity and contact information of the jurors, and the jury verdict forms.

{¶35} Moreover, while there is no statute either authorizing or precluding the sealing of civil cases, the Ohio Supreme Court has recognized, "[t]he inherent authority

of a court to expunge and seal a record does not turn on whether a proceeding is criminal or civil. Rather, the determination is whether 'unusual and exceptional circumstances' exist and whether the interests of the applicant outweigh the legitimate interest of the government to maintain the record." *Schussheim v. Schussheim*, 137 Ohio St.3d 133, 2013-Ohio-4529, ¶16. *See also Capital One Bank, USA, N.A. v. Essex*, 2nd Dist. Montgomery No. 25827, 2014-Ohio-4247, ¶9.

{¶36} In this case, the unusual and exceptional circumstances are clear. Ms. Lloyd demonstrated a pervasive and consistent pattern of levying personal attacks, not based in any legitimate legal claim, on those who opposed her: the 26 defendants listed in her complaint, the attorneys who represented them, the first trial court judge, the appointed trial court judge, and the court staff. The record is fraught with Ms. Lloyd's meritless pro se filings, even during periods when she was represented by counsel. For example, she made numerous attempts to disqualify the two judges who presided over her case; after failed affidavits of disqualification to the Supreme Court of Ohio, the initial judge recused herself and the Supreme Court of Ohio appointed a visiting judge. Ms. Lloyd then filed at least four affidavits of disqualification against the visiting judge. In response to the last affidavit, the Supreme Court of Ohio warned her that future frivolous filings would result in sanctions against her. Additionally, she attempted to disqualify opposing counsel by sending their law firm an email offering negative character testimony against different opposing counsel in an unrelated case of eviction against him. She also accused the court and its staff of altering the transcripts to paint her in a negative light.

{¶37} By sealing the identities of the jurors, the trial court is protecting the privacy of the jurors. Moreover, she makes no allegation of error on the part of the jury on appeal

and makes no argument that she is prejudiced by the sealing of the jury records. Accordingly, we find no error in the court's decision to seal the jury verdict forms and jurors' identities, especially considering all other records in this case are open and part of the public record.

{¶38} Her second assignment of error is without merit.

{¶39} Her third assignment of error states:

{¶40} The trial court committed reversible error and an abuse of discretion by sanctioning Lloyd and refusing to dismiss all sanctions against Lloyd (T.d.487)(T.d. 505)(T.d. 506)

{¶41} Most of Ms. Lloyd 26-page argument under her third assignment of error are unsubstantiated claims, or attempts to relitigate the case, with minimal citations to the record or the law. Several of the arguments she makes were resolved by this court in *Lloyd I*. She is barred by res judicata from now raising issues that were or could have been raised in a previous appeal. *See Grava v. Parkman Twp.*, 73 Ohio St.3d 379, (1995), syllabus ("[A] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action."). We reject the invitation to again address matters addressed in *Lloyd I*, including but not limited to the issues of admissibility of evidence, discovery, jury instructions, and attorney fees, in this present appeal.

{¶42} Nevertheless, in the interest of justice, we review the trial court's decision to sanction Ms. Lloyd. The standard of review to be utilized when reviewing rulings on R.C. 2323.51 is mixed; the trial court's initial decision that a party engaged in frivolous conduct that will not be disturbed where the trial court's findings are supported by competent, credible evidence. *Keith-Harper v. Lake Hosp. Sys., Inc.*, 11th Dist. Lake No. 2015-L-137, 2017-Ohio-7361, ¶23. The decision to assess a penalty for frivolous conduct

is reviewed for an abuse of discretion. *Id.* at ¶24. The term "abuse of discretion" is one of art, connoting judgment exercised by a court which neither comports with reason, nor the record. *State v. Ferranto*, 112 Ohio St. 667, 676-678 (1925). An abuse of discretion may be found when the trial court "applies the wrong legal standard, misapplies the correct legal standard, or relies on clearly erroneous findings of fact." *State v. Figueroa*, 11th Dist. Ashtabula No. 2016-A-0034, 2018-Ohio-1453, ¶26, citing *Thomas v. Cleveland*, 176 Ohio App.3d 401, 2008-Ohio-1720, ¶15 (8th Dist.).

{¶43} Preliminarily, we address Ms. Lloyd's jurisdictional argument. Ms. Lloyd argues that since she moved out of the state of Ohio in February 2019, the court no longer has personal jurisdiction over her to issue sanctions. However, Ms. Lloyd initially filed her lawsuit against defendants in the Portage County Court of Common Pleas, thus consenting its personal jurisdiction over her. Further, she may be deemed to have continually waived personal jurisdiction by failing to raise the issue at the trial level and continuing to request service, file motions, and respond to filings in the Portage County Court of Common Pleas. *See Sec. Ins. Co. v. Regional Transit Auth.*, 4 Ohio App.3d 24, 28 (8th Dist.1982) ("A question of personal jurisdiction (unlike a question of subject matter jurisdiction) may not be raised for the first time on appeal."); *Ohio Hosp. Ins. Co. v. Physicians Ins. Co. of Ohio*, 11th Dist. Lake No. 92-L-096, 1993 WL 548438, *6 (Dec.30, 1993)(noting that personal jurisdiction can be waived.).

{¶44} Ms. Lloyd also argues Civ.R. 11 authorizes sanctions against attorneys, not parties. However, Civ.R. 11 allows sanctions for willful violations of the rule by any attorney or a pro se party. *Id.* Here, Ms. Lloyd proceeded pro se at several instances, including the first filing of the complaint, and from the conclusion of the jury trial forward.

Moreover, though sanctions were brought against her under R.C. 2323.51 and Civ.R. 11, the court only found Ms. Lloyd's conduct frivolous under R.C. 2323.51.

{¶45} A motion for sanctions under R.C. 2323.51 requires a three-step analysis. *Keith-Harper, supra,* at ¶27. "First, did an individual engage in frivolous conduct. Second, if the conduct was frivolous, was another party adversely affected by the frivolous conduct. And third, the amount of award, if any." *Id.*, citing *Tipton v. Directory Concepts, Inc.*, 5th Dist. Richland No. 13CA61, 2014-Ohio-1215, ¶32.

{¶46} R.C. 2323.51(A)(2)(a) defines "frivolous conduct" in pertinent part as conduct of a party to a civil action that satisfies any of the following:

> {¶47} (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> {¶48} (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> {¶49} (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> {¶50} (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief. R.C. 2323.51(A)(2)(a).

{¶51} In this case, the court found objectively frivolous conduct, as stated in its findings of facts and conclusions of law. We will not reiterate all the trial court's findings, as they span several pages. Several of the most pertinent reasons the court found include the following:

{¶52} Ms. Lloyd disclosed prior to trial that she intended to call 55 witnesses during her case knowing they would not appear and testify and failing to properly procure their testimony; at trial, she only called five witnesses.

{¶53} Ms. Lloyd knew she did not possess all of the disclosed exhibits and defied the court's orders to provide defendants' counsel with all exhibits prior to trial. She attempted to provide color photographs at trial, but provided defendants' counsel with blotched, black and white copies.

{¶54} Ms. Lloyd knew or should have known that her case had no merit, that she could not prove her case, and that she had insufficient evidence to prove her case.

{¶55} She presented no evidence at trial in support of most of her claimed damages, including but not limited to presenting no evidence:

a. proving her medical conditions and that any action of defendants cause any medical condition;

b. that any defendant intentionally damaged or set foot on her property;

c. that the timber removed was on her property and caused a diminution of value of her property;

d. that any defendant made a false statement about her or was defamatory per se or caused special harm to her. She only presented evidence to show that defendants had a negative opinion of her;

e. that any statement of any defendant put her in a false light;

f. that any defendant owed her a duty, and breached such duty; and

g. that any defendant intentionally caused her emotion distress.

{¶56} Before, during, and after trial, she filed dozens of motions and other documents which included irrelevant information and served no legitimate purpose; the court found that her filings were designed only to harass and embarrass defendants and others, including employees of the court.

{¶57} Despite losing at trial, she continued to repeat her allegations in duplicitous filings that defendants had to answer.

{¶58} A party need only present minimal evidentiary support of its allegations or factual contentions to avoid a frivolous conduct finding. *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶42. In *Krlich,* however, this court found that although the appellant presented evidence, it did not constitute "evidentiary support" for her allegations. *Id.* at ¶46. The same can be said in this case. For example, Ms. Lloyd presented pictures of tree branches on what she purports is her property but did not show evidence to show the trees removed were on her property. She also showed a picture of a Facebook post with a picture Mr. Szabo posted of a man urinating on a fence, but nothing indicated that it was a picture of Mr. Szabo or Ms. Lloyd's fence.

{¶59} Further, while Ms. Lloyd argues that she did not intend to harass anyone with her filings, "R.C. 2323.51(A)(2)(a)(i) does not require evidence of intent." *Krlich, supra,* at ¶55. "Instead the 'conduct' must '*obviously* serve[ ] merely to harass or maliciously injure another party* * *.'" *Id.* quoting R.C. 2323.51(A)(2)(a)(i). This is an objective standard. *Krlich, supra.* In this case, Ms. Lloyd repeatedly filed duplicative motions and other documents after the court had already ruled on the same matter, or motions without a legal basis, causing the defendants to incur substantial legal cost to defend against them. They objectively could serve no other purpose than to harass the defendants.

{¶60} Finally, Ms. Lloyd insists that she should not be sanctioned because the presentation of evidence was her attorney's job. We are not persuaded. R.C. 2323.51 allows an award of attorney fees to be "made against a party, the parties counsel of record, or both." R.C. 2323.51(B)(4). "The objective of the statute is to impose sanctions on the person actually responsible for the frivolous conduct." *Stone v. House of Day*

Funeral Serv., Inc., 140 Ohio App.3d 713, 723, (6th Dist.2000), citing *Scheiderer & Assoc. v. London*, 81 Ohio St.3d 94, 95 (1998). Here, it is Ms. Lloyd who initiated the case, failed to pay the arborist for his expert testimony, took the pictures of various Facebook posts and set up cameras toward Mr. Thomsbery's property, but failed to realize they were not evidence of cognizable claims, and filed numerous motions pro se both while she was represented by counsel and after he withdrew his representation.

{¶61} In light of the foregoing, the trial court's finding that many of Ms. Lloyd's actions before, during, and after trial constituted frivolous conduct under R.C. 2323.51(A)(2)(a) was supported by competent, credible evidence, and its decision to impose sanctions was not an abuse of discretion.

{¶62} Accordingly, her third assignment of error is without merit.

{¶63} Her fourth states:

> {¶64} The trial court committed reversible error and an abuse of discretion by refusing to stay case 2016CV00230 until the appeals case 2019PA00080 is decided pursuant to civ R 62B(T.d. 486)

{¶65} Under her fourth assignment of error Ms. Lloyd argues the trial court erred by denying her motion to stay proceedings until this court decided *Lloyd I*. She also argues that based on *Jay, supra,* the trial court was without jurisdiction to award attorney fees because of the pending appeal. However, as this court discussed under the first assignment of error, the trial court did not lose its jurisdiction to award attorney fees while the *Lloyd I* appeal was pending.

{¶66} Furthermore, she based her motion to stay on Civ.R. 62(B), which deals with an appellant's ability to stay the enforcement of a judgment against the party seeking the appeal while the appeal is pending. However, this rule was not applicable as no party

was seeking an enforcement of a judgment. For this reason, we find no error in the trial court's decision denying her motion to stay proceedings.

{¶67} Accordingly, her fourth assignment of error is without merit.

{¶68} Her fifth states:

{¶69} The trial court committed reversible error and an abuse of discretion by refusing to release audiotape of the trial.(T.d. 504)

{¶70} Under her fifth assignment of error, Ms. Lloyd argues she only has to pay $2.50 per page for transcripts, that she should get them at cost, and that she is entitled to $1,000 in damages. She raised these issues in *Lloyd I* and is prohibited by res judicata from again appealing them. *See Grava, supra.*

{¶71} Accordingly, her fifth assignment of error is without merit.

{¶72} Her sixth states:

{¶73} The trial court committed reversible error and an abuse of discretion by refusing to assign an Attorney probono to Lloyd when her civil rights are being violated and trial court allowed Hull to withdraw in violation of local rule 20.04(T.d. 486)

{¶74} Under her sixth assignment of error Ms. Lloyd argues she has a right to counsel under the 14th Amendment and claims the trial court erred by allowing her former counsel, Attorney Hull, to withdraw his representation. This court addressed both of these alleged errors in *Lloyd I*, and Ms. Lloyd is barred by res judicata from raising the same issue again here. *Id.*

{¶75} Accordingly, her sixth assignment of error is without merit.

{¶76} Her seventh states:

{¶77} Trial court committed reversible error and an abuse of discretion by denying Lloyds Motion for a new trial and a mistrial without a hearing on the Motion(T.d. 486)

{¶78} Under her seventh assignment of error, briefly Ms. Lloyd argues the trial court by violating Portage County Loc.R. 8.03. However, as this court stated in *Lloyd I*, "violations of Local Rules do not generally constitute grounds for reversal." *Lloyd v. Thomsbery*, 11th Dist. Portage No. 2019-P-0080, ___-Ohio-___, ¶20, citing *Cart v. Fed. Natl. Mtge. Assoc.*, 11th Dist. Ashtabula No. 2011-A-0059, 2012-Ohio-2241, ¶49; *Yoel v. Yoel*, 11th Dist. Lake No. 2009-L-063, 2012-Ohio-643, ¶40; *Allen v. Allen*, 11th Dist. Trumbull No. 2009-T-0070, 2010-Ohio-475, ¶29-33. Ms. Lloyd has offered no reason for deviating from this standard.

{¶79} Furthermore, insofar as Ms. Lloyd appeals the denial of her motions filed in July 2019, this matter was discussed and resolved in *Lloyd I*. Thus, she is prohibited by res judicata from raising this issue again here. *See Grava, supra*. Insofar as Ms. Lloyd appeals the denial of her motions made on September 9, 2019, we find no error in the trial court's denial of these motions as they were repetitive motions filed after the 28-day deadline proscribed in the Ohio Rules of Civil Procedure. Civ.R. 59(B); Civ.R. 59(B).

{¶80} Accordingly, her seventh assignment of error is without merit.

{¶81} Her eighth states:

> {¶82} The trial court committed reversible error and an abuse of discretion by denying Lloyds Motion to strike Szabos Supplemental Citation in Support of Attorneys fees.(T.d. 486)

{¶83} A trial court's decision on a motion to strike is reviewed for abuse of discretion. *Hicks v. Cadle Co.*, 11th Dist. Trumbull No. 2014-T-0103, 2016-Ohio-4728, ¶14. Under her eighth assignment of error Ms. Lloyd argues that Loc.R. 8.03 does not allow for supplemental filings and alleges the trial court erred by accepting this supplemental citation. Preliminarily, however, as stated above, violations of Local Rules do not generally constitute grounds for reversal.

{¶84} Moreover, we find no abuse of discretion on the part of the trial court in allowing this supplemental filing. On September 3, 2019, appellee-defendants, Michael and Sandi Szabo, filed, through Attorney Molnar, a Supplemental Citation in Support of Defendants' Motion for Attorney Fees and Related Expenses Pursuant to R.C. 2323.51. The case they attached, *Krlich, supra*, had been decided on August 26, 2019, subsequent to the appellee-defendants' filing their initial motion for attorney fees on July 10, 2019. As there is no possible way the appellee-defendants could have cited *Krlich* in their initial motion, and it was relevant authority from this district, we discern no error on the part of the trial court in allowing the supplemental citation.

{¶85} Accordingly, her eighth assignment of error is without merit.

{¶86} Her final assignment of error states:

{¶87} The trial court committed reversible error and an abuse of discretion by not swearing in the witnesses at October 18, 2019 hearing.

{¶88} Under her ninth assignment of error, Ms. Lloyd argues the trial court violated Federal Rule of Evidence 603 by not swearing in witness at the October 18, 2019 hearing. The Federal Rules of Evidence are applicable in United States courts, that is federal courts; Ms. Lloyd chose to bring suit in Ohio, under Ohio law. Accordingly, the Ohio Rules of Evidence apply to this case, not the Federal Rules of Evidence. The Ohio Rules of Evidence has an analogous provision: Evid.R. 603, which states "Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so."

{¶89} However, she has not filed in this court the transcript of the October 18, 2019 hearing. "The duty to provide a transcript for appellate review falls upon the

appellant." *Crawford v. Kirtland Local School Dist. Bd. of Education*, 11th Dist. Lake No. 2018-L-010, 2018-Ohio-4569, ¶76, quoting *Knapp v. Edwards Laboratories*, 61 Ohio St.2d 197, 199 (1980). "This is necessarily so because an appellant bears the burden of showing error by reference to matters in the record." *Id.* Without transcripts to review, this court has no choice but to presume the validity of the lower court's proceedings and affirm. *Id.*

{¶90} Accordingly, her ninth assignment of error is without merit.

{¶91} In light of the foregoing, the judgments of the Portage County Court of Common Pleas are affirmed. Defendant-appellee, Amanda Shuherk's, motion for dismissal is denied.

MARY JANE TRAPP, P.J.,

TIMOTHY P. CANNON, J.,

concur.

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
PORTAGE COUNTY, OHIO

SUSAN LLOYD, Plaintiff, v. JOSHUA THORNSBERY, et al., Defendants.	CASE NO. 2016 CV 230 JUDGE THOMAS J. POKORNY ORDER

This matter came before the Court upon the Motion of Defendants, Staci Dalton Liddle, Tim Welms, Joshua Thornsbery, Phillip Siwierka, Eric Siwierka, Jamie Lesch Newman, Darrel Huber, Apryle Davis, Jason Ortman, Shelly Ortman, Theresa Giaimo, Nick Balas, and Robert DiNatale ("Defendants"), for Sanctions against Plaintiff, Susan Lloyd ("Plaintiff"), pursuant to R.C. 2323.51 and Civ.R. 11. For the reasons that follow, based upon Defendants' Motion, Plaintiff's response, evidence and argument taken at hearings held on October 11, 2019 and October 18, 2019, and the Affidavit of Counsel attached as Exhibit A, the Court finds the Motion well taken, and finds and orders as follows:

FINDINGS OF FACT

1. On March 16, 2016, Plaintiff filed a civil complaint. Plaintiff would go on to amend her complaint several times throughout the litigation.
2. At various times in this litigation, Plaintiff has acted on her own behalf or through legal counsel.
3. The matter proceeded to trial on June 17, 2019 and concluded with a jury verdict in Defendants' favor on June 21, 2019.

APPENDIX R

4. Prior to the commencement of trial, Plaintiff disclosed that she intended to call fifty-five (55) witnesses during her case.

5. At trial, Plaintiff called five (5) witnesses on direct examination and in support of her case.

6. Prior to the commencement of trial, Plaintiff identified dozens of exhibits that she intended to present during her case.

7. Plaintiff did not seek to admit the vast majority of the disclosed exhibits.

8. Plaintiff knew, at the time of the disclosure of the witnesses, that they would not appear and testify, and failed to properly procure their testimony.

9. Plaintiff knew she did not possess all of the disclosed exhibits.

10. Despite being ordered by this Court to exchange all her exhibits to Defendants' counsel in the form in which she would seek to introduce them, Plaintiff defied that order.

11. During opening statements, Plaintiff failed to comply with the Ohio Civil Rules and did not state any claim for relief against all but six Defendants.

12. As a result, Plaintiff's claims against nearly all Defendants were dismissed after counsel's opening statement.

13. Plaintiff attempted to introduce original color photographs at trial despite providing Defendants nothing more than blotched, black and white copies.

14. Plaintiff knew that the various records custodians necessary to authenticate the disclosed exhibits would not appear voluntarily.

15. Plaintiff disclosed more than one-half dozen witnesses as experts.

16. Plaintiff knew those experts had not submitted expert reports, yet she marked and identified documents as sham reports.

17. Plaintiff knew this Court had concluded discovery in March 2017 yet submitted exhibits and sham expert reports not properly or timely disclosed.

18. Plaintiff knew those experts would not voluntarily appear at trial, and that she had not paid them to testify, yet she disclosed the experts as witnesses nonetheless.

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19. Plaintiff filed subpoenas with the Clerk electronically, purported to show service at some future date and time, and never properly updated those records.

20. Plaintiff failed to enforce subpoenas upon her disclosed witnesses and did not procure their attendance and testimony at trial.

21. By disclosing these witnesses, Plaintiff forced Defendants to prepare for their anticipated testimony, to account for that anticipated testimony in Defendants' opening statement, and to prepare to cross-examine each of those witnesses.

22. When it became clear to Plaintiff that her authenticating witnesses would not appear for trial, she maintained the charade of having cognizable claims throughout a week-long jury trial when she already knew she could not prove her case.

23. Several Defendants testified on October 11, 2019, that they have incurred legal fees as a result of Plaintiff's conduct.

24. Defendants' testimony at the October 11, 2019 hearing was that the week-long jury trial caused them to miss work, travel to attend trial, and incur legal fees.

25. Plaintiff knew, or should have known, that her case had no merit, that she could not prove her case, and that she had insufficient evidence to prove her case.

26. Plaintiff presented no evidence at trial in support of most of her claimed damages.

27. Plaintiff attempted to introduce false exhibits to one of her witnesses, Arborist David Kennedy.

28. Plaintiff attempted to alter the expert report of one of her witnesses, Arborist David Kennedy.

29. Plaintiff presented no evidence proving her medical conditions, and Plaintiff presented no evidence establishing that any actions of Defendants caused any of her medical conditions.

30. After the conclusion of trial, Plaintiff has filed approximately five dozen motions and other documents which she knew, or should have known, were frivolous, duplicative, and not supported by existing law.

31. Before, during, and after the conclusion of the trial, Plaintiff filed dozens of motions and other documents which included irrelevant information

and served no legitimate purpose; her filings were designed only to harass and embarrass Defendants and others, including employees of this Court.

32. Despite losing at trial, Plaintiff continues to repeat her allegations in public forums, and forced Defendants to seek to seal the record in this case.

33. The legal fees collectively incurred by Defendants, as of the date of this Order, total $53,809.00, and are broken down as follows:

a. $34,809.00, to Flynn, Keith and Flynn
b. $2,500.00 to Williams, Kratcoski, and Can
c. $2,500.00 to Troy Reeves, Esq.
d. $14,000.00 to Mark Hanna, Esq.

CONCLUSIONS OF LAW

1. Frivolous conduct is described in R.C. 2323.51(A)(2) as:

> (a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record that satisfies any of the following:
>
> > (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
> >
> > (ii) It is not warranted under existing law , cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
> >
> > (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
> >
> > (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

2. Whether conduct is "frivolous" under R.C. 2323.51(A)(2)(a) "is judged under an objective, rather than a subjective standard." Marshall v. Cooper & Elliott, 8th Dist. No. 104934, 2017-Ohio-4301, 82 N.E.3d 1205, ¶ 17, citing State ex rel. DiFranco v. S. Euclid, 144 Ohio St.3d 571, 2015-Ohio-4915, 45 N.E.3d 987, ¶ 15.

3. A motion for sanctions on frivolous conduct requires "a three-step analysis by the trial court: (1) whether the party engaged in frivolous conduct, (2) if the conduct was frivolous, whether any party was adversely affected by it, and (3) if an award is to be made, the amount of the award." R.C. 2323.51(B)(1); *see also, Carbone v. Nueva Construction Group, L.L.C.*, 8th Dist. No. 103942, 2017-Ohio-382, 83 N.E.3d 375, ¶ 23, citing *Ferron v. Video Professor, Inc.*, 5th Dist. Delaware No. 08-CAE-09-0055, 2009-Ohio-3183, ¶ 44.

4. A motion for sanctions on frivolous conduct is timely filed when it is filed at any time not more than thirty days after the entry of final judgment in a civil action or appeal. R.C. 2323.51(B)(1).

5. Defendants' motion is timely.

6. Regarding Plaintiff's claims for private, qualified nuisance, she was required to prove that each Defendant engaged in the 'negligent maintenance of a condition that creates an unreasonable risk of harm, ultimately resulting in injury, which was real, material or substantial. *Hamilton v. Hibbs L.L.C.*, 10th Dist. Franklin No. 11AP-1107, 2012-Ohio-4074, ¶¶ 14, 16.

7. "Damages for nuisance may include diminution in the value of the property, costs of repairs, loss of use of the property, and compensation for annoyance, discomfort, and inconvenience." *Id.*, citing *Widmer v. Fretti*, 95 Ohio App. 7, 16-17 (6th Dist.1952).

8. Plaintiff presented no evidence to the jury which permitted the jury to find any liability for any Defendant under her nuisance theory for recovery.

9. Plaintiff presented no evidence to the jury which permitted the jury to find any damages against any Defendant under her nuisance theory of recovery.

10. Regarding Plaintiff's claims for trespass, she was required to prove each Defendant without authority or privilege, physically invades or unlawfully enters the private premises of another whereby damages directly ensue." *Hayes v. Carrigan*, 1st Dist. Hamilton Nos. C-160554, C-160630, C-160641, 2017-Ohio-5867, ¶ 11, citing *R&R Family Invests. v. Plastic Moldings Corp.*, 1st Dist. Hamilton No. C-160382, 2016-Ohio-8125, ¶ 22.

11. Intentional conduct is an essential element of trespass. *Id.*, citing *Merino v. Salem Hunting Club*, 7th Dist. Columbiana No. 07 CO 16, 2008-Ohio-6366, ¶ 44.

12. "An intentional tort occurs when the actor desires to cause consequences of his act, or believes that the consequences are substantially certain to result from it." *Id.*, citing *Robinson v. Cameron*, 12th Dist. Butler No. CA2014-09-191, 2015-Ohio-1486, ¶ 12.

13. Plaintiff failed to present any evidence that any Defendant trespassed onto her property.

14. Plaintiff failed to present any evidence that any Defendant intentionally set foot on her property.

15. Plaintiff failed to present any evidence that any Defendant damaged her property.

16. With regards to Plaintiff's destruction of timber claim, she was required to prove that each Defendant recklessly cut down, destroy, girdle, or otherwise injure a vine, bush, shrub, sapling, tree, or crop standing or growing on her land. *Hayes* at ¶ 16.

17. Plaintiff admitted she no longer owned the property upon which the timber was allegedly cut.

18. Plaintiff's witnesses did not agree that the timber was on Plaintiff's former property.

19. Plaintiff admitted she sold the property in question for more than she purchased it.

20. Plaintiff failed to present any evidence at trial that the destruction or removal of any timber on her property resulted in a diminution of value.

21. Regarding Plaintiff's claim for defamation, she was required to prove five elements: 1) a false statement, 2) about the plaintiff, 3) published without privilege to a third party, 4) with fault or at least negligence on the part of the Defendant, and 5) that was either defamatory per se or caused special harm to the plaintiff. *Pincus v. Pincus*, 8th Dist. Cuyahoga No. 106845, 2018-Ohio-5231, ¶ 14, *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶ 77.

22. Opinion statements are constitutionally protected speech.

23. Plaintiff failed to introduce evidence that any Defendant made a false statement of fact about her, nor that the statement was defamatory per se or caused special harm to her.

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24. The evidence demonstrated that Plaintiff's own conduct on social media supported the truth of any statements, opinion or otherwise, that any Defendant made about her.

25. Regarding Plaintiff's claim of invasion of privacy/false light, Plaintiff was required to prove that each Defendant gave publicity to a matter concerning her that places her before the public in a false light, and that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and "(b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451, ¶¶ 22-24, citing Restatement of Torts 2d, Sec. 652A (1977).

26. False-light claims must contain allegations of several elements. First, the statements must be alleged as untrue. *Welling* at ¶ 52. Second, the information must be publicized. *Id.* Publicity is not synonymous with publication in a defamation claim. *Id.* at ¶ 53. Publicity requires that the communication be made to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. *Id.*

27. Plaintiff failed to introduce any evidence which proved any element of her false light claim; Defendants did nothing more than converse on a private Facebook page, and not before the public at large.

28. To the contrary, the evidence demonstrated that it was Plaintiff herself who cast a light upon herself with posts in public forums.

29. With regard to Plaintiff's claim for negligence, she was required to prove (1) each defendant owed her a duty of care; (2) each defendant breached that duty of care; and (3) as a direct and proximate result of each defendant's breach, she suffered injury. *Stenger v. Timmons*, 10th Dist. Franklin No. 10AP-528, 2011-Ohio-1257, ¶ 5.

30. A 'duty' is an obligation imposed by law on one person to act for the benefit of another person due to the relationship between them. *Hardy v. Hall*, 2d Dist. Montgomery Case No. 03-LW-3674, 2003-Ohio-4978, ¶ 9, citing *Berdyck v. Shinde*, 66 Ohio St.3d 573, 579 (1993).

31. Plaintiff did not introduce any evidence at trial that any Defendant owed her a duty, nor that any Defendant breached such a duty.

32. Regarding Plaintiff's claim for intentional infliction of emotional distress, she was required to prove (1) each defendant intended to cause the plaintiff serious emotional distress; (2) each defendant's conduct was extreme and outrageous; and (3) each defendant's conduct was the

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proximate cause of plaintiff's serious emotional distress. *Phung v. Waste Mgt. Inc.*, 71 Ohio St.3d 408, 410, 1994-Ohio-389, 644 N.E.2d 286.

33. Plaintiff failed to introduce any evidence to support any element of her emotional distress claim.

34. Plaintiff's decision to take this action through a jury trial, and all her subsequent filings, demonstrate that it served no legitimate purpose; she meant only to harass, annoy, and maliciously injure Defendants.

35. Defendants were collectively represented by one attorney, Jason Whitacre.

36. Whitacre charged his normal hourly rate of $250.00, allocated proportionally amongst Defendants.

37. Whitacre has been practicing law for fifteen years in Ohio, and attorneys reasonably charge $250.00 per hour to a single client.

38. Billing in 1/10th hourly increments is a generally-accepted practice and common amongst attorneys.

39. Fees totaling $53,809.00 for thirteen defendants in a civil action lasting more than three years and culminating in a week-long jury total is eminently reasonable under the circumstances.

40. Plaintiff's conduct was frivolous under R.C. 2323.51.

41. Plaintiff's conduct caused actual harm to Defendants.

42. Plaintiff's conduct warrants a sanction against her in the full amount of attorneys' fees incurred by Defendants.

43. But for Plaintiff's unreasonable and unwarranted conduct, Defendants would not have incurred the attorneys' fees as they did.

Accordingly, pursuant to R.C. 2323.51, this Court orders that Plaintiff, Susan Lloyd, pay to Defendants, Staci Dalton Liddle, Tim Welms, Joshua Thornsbery, Phillip Siwierka, Eric Siwierka, Jamie Lesch Newman, Darrel Huber, Apryle Davis, Jason Ortman, Shelly Ortman, Theresa Giaimo, Nick Balas, and Robert DiNatale, jointly and severally, an award of attorneys' fees in

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the amount of $53,809.00.

This is a final, appealable order. No just cause for delay.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

JUDGE THOMAS J. POKORNY
(sitting by assignment)

cc: All Parties

IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO

SUSAN LLOYD *Plaintiff,* vs. JOSHUA THORNSBERY, et al., *Defendant.*	CASE NO.: 2016 CV 230 JUDGE THOMAS J. POKORNY (sitting by assignment) **ORDER**

FINDINGS OF FACT

1. Michael and Sandi Szabo were named Defendants in the current action in the fourth amended complaint that was filed in 2017.

2. Before the trial commenced, Susan Lloyd failed to conduct depositions of Michael or Sandi Szabo to ascertain the meaning behind the Facebook messages that they posted.

3. A jury trial began on this case June 17, 2019 and resulted in a unanimous jury verdict in favor of Michael Szabo on June 21, 2019. Sandi Szabo received a directed verdict in her favor on June 17, 2019.

4. Both before and during trial, the Szabos denied each and every allegation against them.

5. At trial, Susan Lloyd presented no evidence that Michael and Sandi Szabo were ever on her property or interfered with her enjoyment of her property.

6. Susan Lloyd has repeatedly insisted that Michael Szabo urinated on a fence around her property and damaged the fence. She presented no evidence to support this claim other than Michael Szabo's own Facebook posts that Michael Szabo has contended is a joke.

7. During the pendency of this case, Susan Lloyd brought a complaint against Michael Szabo to the Ohio Civil Rights Commission. At this point and time, Susan Lloyd was on notice that it was not Michael Szabo in the alleged photograph of a person urinating on Susan Lloyd's fence. Despite this learning this fact, Susan Lloyd continued to pursue her claims against Michael Szabo.

8. Susan Lloyd only presented her own testimony to establish her psychic injury, allegedly post-traumatic stress disorder caused by the Facebook posts made by Defendants. She did not present the testimony of any medical experts.

9. None of the medical records submitted by the Plaintiff referenced the Facebook posts as causing her injuries.

10. Susan Lloyd presented no evidence that Michael or Sandi Szabo ever intentionally inflicted emotional distress on her.

11. Susan Lloyd presented no evidence that Michael or Sandi Szabo ever posted any personal information belonging to her that cast her in a false light.

12. Susan Lloyd presented no evidence that Michael or Sandi Szabo ever made a false statement about her. She only presented evidence that showed that Michael and Sandi Szabo had a negative opinion of her.

13. Michael and Sandi Szabo made a timely motion for frivolous conduct against Susan Lloyd after the entry of final judgment in this case.

14. After the trial, the Plaintiff filed approximately 60 different documents in the forms of various motions. Many of these motions were duplicitous. Many also contained irrelevant information that served no other purpose than to harass the Defendants, their counsel, and employees of this court.

15. The voluminous number of filings by the Plaintiff has substantially increased the cost of litigation for Michael and Sandi Szabo.

16. After being denied a motion for a new trial, Susan Lloyd continued to file multiple motions for a new trial without adequate legal basis for repeating those motions.

17. Susan Lloyd filed multiple motions for sanctions against various Defendants; these motions were not based on existing law and did not warrant a change in the law.

18. Susan Lloyd has also continued to harass Michael and Sandi Szabo online following the conclusion of this trial, asserting on multiple occasions that Michael Szabo was engaged in conduct that formed the claims that Susan Lloyd presented at trial. These were the same claims that the jury found unanimously in favor of Michael Szabo, not Susan Lloyd, on.

19. At an evidentiary hearing on October 11, 2019, Michael and Sandi Szabo gave testimony that they were harmed by Susan Lloyd's conduct. As a result of her conduct, the Szabos had to hire the law firm Perduk & Associates, Co., LPA to represent them at trial and in defense of motions filed by Susan Lloyd after the trial. The Szabos testified to their attorney fees of that date.

20. On October 18, 2019, Attorney Perduk and Attorney Molnar submitted affidavits to this court testifying that their hourly rates were $275 and $175 respectively, and as of that date, Michael and Sandi Szabo's bill with their firm for this matter totaled $39,761.25.

CONCLUSIONS OF LAW

21. Ohio Revised Code 2323.51(A)(2) defines frivolous conduct in pertinent part:

> "(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support, or, is specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (iv) The conduct consists of denials or factual contentions that have no evidentiary support, or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery."

R.C. 2323.51 (A)(2)(a)(i) through (iv).

22. R.C. 2323.51 uses an objective standard in determining whether sanctions may be imposed for frivolous conduct. *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶ 41(11th Dist.). A finding of frivolous conduct under R.C. 2323.51 is decided without inquiry as to what the individual knew or believed. *Id.*

23. The motion for sanctions under the frivolous conduct statute was timely made by the Szabos under 2323.51(B)(1).

24. A party only needs minimal evidentiary support of its allegations or factual contentions to avoid a frivolous conduct filing. *Id.* at ¶ 42. Litigants who lacked evidence to prove all elements of a tort at the time of the filing of a complaint have been found to have engaged in frivolous conduct. *Id.* at ¶ 46.

25. Whether the filing and prosecution of the lawsuit is frivolous requires an analysis of the facts and legal elements of Trespass, Defamation, Intentional Infliction of Emotional Distress, False Light – Invasion of Privacy.

26. In *Adams v. Piroa & Conen Invests., Ltd.*, the Eleventh Appellate District identified the elements necessary to establish claims of Trespass. The Court held that a claim of Trespass

requires that a plaintiff show that a defendant without authority or privilege, physically invades or unlawfully enters the private premises of another whereby damages directly ensue. 2010-Ohio-3359 ¶ 34.

27. No evidence was ever presented at trial that Michael or Sandi Szabo ever physically trespassed on Susan Lloyd's property, or trespassed on the property with noise or smoke.

28. In *Kovacic v. Eastlake*, the Eleventh Appellate District identified the elements necessary to establish claims of Intentional Infliction of Emotional Distress. 11th Dist. Lake No. 2005-L-205, 2006-Ohio-7016, ¶ 92. The Court held that a claim of IIED requires that the plaintiff must show that:

a. The defendant intended to cause the plaintiff serious emotional distress.
b. The defendant's actions were extreme and outrageous as to go beyond all possible bounds of decency and can be considered intolerable in a civilized society.
c. The defendant's actions were the proximate cause of the plaintiff's psychic injury.
d. The defendant's actions caused mental anguish that was so serious of nature that no reasonable person would be expected to endure.

29. Susan Lloyd presented no evidence that Michael or Sandi Szabo ever intended to cause her serious emotional distress. Additionally, the Facebook posts did not constitute extreme and outrageous conduct that goes beyond all possible bounds of decency. While the Facebook posts may have expressed negative opinions of Susan Lloyd, they do not arise to the level of conduct necessary to pursue a claims of Intentional Infliction of Emotional Distress. Finally, Susan Lloyd presented no evidence to establish that the Facebook posts caused her severe emotional distress. Therefore, Susan Lloyd's pursuit of these claims against Michael and Sandi Szabo were frivolous.

30. In *Welling v. Weinfeld*, the Ohio Supreme Court, the elements necessary to establish a claim of False Light – Invasion of Privacy. 113 Ohio St.3d 464, 2007-Ohio-2451, 855 N.E.2d 1051 (2007). The Court held that a defendant who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability for the invasion of privacy if:

a. The false light in which the other was placed would be highly offensive to a reasonable person, and
b. The actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.

31. No evidence was presented at trial that demonstrated that Michael or Sandi Szabo ever made a false statement about Susan Lloyd. Again, while many of the Facebook posts presented Michael and Sandi Szabo's negative opinion of Susan Lloyd, the posts did not constitute false information about her.

32. The maintenance of this action served to merely harass, annoy and maliciously injure the Defendants.

33. While every plaintiff has a right to file some of the motions that Susan Lloyd filed after the conclusion of this trial, the sheer number of motions and other documents filed by Susan Lloyd unnecessarily increased the cost of litigation for Michael and Sandi Szabo due to the duplicitous nature of the documents, the lack of legal basis for many of the motions, and the large amount of irrelevant and scandalous information that served no other purpose than to harass and injure the Defendants. Therefore, Susan Lloyd engaged in frivolous conduct by filing these motions by engaging in conduct that unnecessarily increased the costs of litigation for the Defendants.

34. Michael and Sandi Szabo were harmed by Susan Lloyd's frivolous conduct, which resulted in them incurring legal costs in the amount of $39,761.25

35. Considering the factors enumerated in Ohio Rule of Professional Conduct 1.5(a), these attorney fees were reasonable and necessary.

IT IS HEREBY ORDERED that Plaintiff Susan Lloyd pay sanctions to Defendants Michael and Sandi Szabo in the form of an award of attorney fees in the amount of $39,761.25. This is a final appealable order. No just cause for delay.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

JUDGE THOMAS F. POKORNY
(sitting by assignment)

cc: All Parties

Additional material from this filing is available in the Clerk's Office.