

The Supreme Court of Ohio

Alex Duncan

Case No. 2022-0403

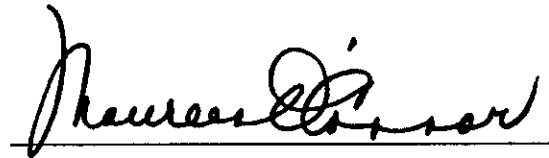
v.

ENTRY

Jennifer R. Bartone, et al.

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).

(Geauga County Court of Appeals; No. 2021-G-0018)

A handwritten signature in black ink, appearing to read "Maureen O'Connor", is written over a horizontal line.

Maureen O'Connor
Chief Justice

The Supreme Court of Ohio

Alex Duncan

v.

Jennifer R. Bartone, et al.

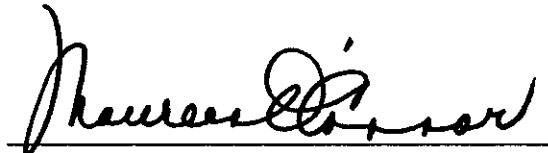
Case No. 2022-0403

RECONSIDERATION ENTRY

Geauga County

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

(Geauga County Court of Appeals; No. 2021-G-0018)

A handwritten signature in black ink, appearing to read 'Maureen O'Connor', is written over a horizontal line.

Maureen O'Connor
Chief Justice

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

September 13, 2022

[Cite as *09/13/2022 Case Announcements, 2022-Ohio-3135.*]

APPEALS ACCEPTED FOR REVIEW

2022-0768. State v. Bond.

Cuyahoga App. No. 110022, 2022-Ohio-1487. Sua sponte, cause held for the decisions in 2020-1496, *State v. Hacker*, and 2021-0532, *State v. Simmons*.

Kennedy and DeWine, JJ., dissent.

2022-0769. State v. Philpot.

Cuyahoga App. No. 110828, 2022-Ohio-1499. Sua sponte, cause held for the decisions in 2020-1496, *State v. Hacker*, and 2021-0532, *State v. Simmons*.

Kennedy and DeWine, JJ., dissent.

2022-0782. State v. Schilling.

Hamilton App. No. C-210363, 2022-Ohio-1773.

Donnelly and Brunner, JJ., dissent.

DeWine, J., not participating.

2022-0784. Harris v. Hilderbrand.

Jefferson App. No. 21 JE 0013, 2022-Ohio-1555.

Kennedy, Fischer, and DeWine, JJ., dissent.

2022-0815. State v. Scott.

Cuyahoga App. No. 110691, 2022-Ohio-1669. Appeal accepted on proposition of law Nos. II through VI. Sua sponte, cause held for the decisions in 2020-1496, *State v. Hacker*, and 2021-0532, *State v. Simmons*.

2022-0871. State v. Ryan.
Ottawa App. Nos. 21-OT-027 and 21-OT-028.

2022-0877. State v. Collica.
Portage App. No. 2022-P-0026, 2022-Ohio-2000.

2022-0899. State v. Feaster.
Summit App. No. 30277.

2022-0902. State v. Gutierrez.
Wayne App. No. 21AP0033, 2022-Ohio-2252.

2022-0903. State v. Jordan.
Franklin App. No. 21AP-421, 2022-Ohio-2033.

2022-0915. State v. Gravely.
Franklin App. Nos. 22AP-17 and 22AP-18, 2022-Ohio-2153.

2022-0920. State v. Gipson.
Ottawa App. Nos. OT-21-001, OT-21-002, and OT-21-003, 2022-Ohio-2069.
Donnelly, J., dissents.



RECONSIDERATION OF PRIOR DECISIONS

2022-0403. Duncan v. Bartone.
Geauga App. No. 2021-G-0018, 2022-Ohio-755. Reported at 167 Ohio St.3d 1450, 2022-Ohio-2246, 189 N.E.3d 829. On motion for reconsideration. Motion denied.

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

July 5, 2022

[Cite as *07/05/2022 Case Announcements, 2022-Ohio-2246.*]

MERIT DECISIONS WITHOUT OPINIONS

2022-0625. Wilcox v. State.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, Fischer, DeWine, Donnelly, Stewart, and Brunner, JJ., concur.

2022-0636. Williams v. Bobby.

In Habeas Corpus. Sua sponte, cause dismissed.

O'Connor, C.J., and Kennedy, Fischer, DeWine, and Donnelly, JJ., concur.
Stewart and Brunner, JJ., dissent and would order a return of writ.

MOTION AND PROCEDURAL RULINGS

2022-0509. State v. Dugas.

Montgomery App. No. 28770, 2021-Ohio-731. On motion for leave to file delayed appeal. Motion denied.

O'Connor, C.J., and Fischer and Stewart, JJ., dissent.

2022-0580. State v. Gilmore.

Butler App. No. CA2018-06-118, 2019-Ohio-1046. On motion for leave to file delayed appeal due to COVID-19. Motion denied.

Fischer and Brunner, JJ., dissent.

APPEALS ACCEPTED FOR REVIEW

2022-0392. State v. Hawkins.

Clark App. No. 2015-CA-16. Appeal accepted on proposition of law No. I.

Donnelly and Stewart, JJ., would accept the appeal on all propositions of law.

Kennedy, Fischer, and DeWine, JJ., dissent.

2022-0454. State v. Polk.

Cuyahoga App. No. 109826. Sua sponte, cause held for the decisions in 2020-1496, *State v. Hacker*, and 2021-0532, *State v. Simmons*.

Fischer, J., dissents.

APPEALS NOT ACCEPTED FOR REVIEW

2022-0205. State v. Green.

Summit App. No. 29770, 2021-Ohio-2912.

2022-0269. State v. Smith.

Montgomery App. No. 28339, 2020-Ohio-3901.

2022-0380. State v. Washington.

Richland App. No. 2020 CA 0066, 2022-Ohio-625.

2022-0385. Colvin v. Midland Funding, L.L.C.

Hancock App. No. 05-21-04, 2022-Ohio-572.

Kennedy, Fischer, and DeWine, JJ., dissent.

2022-0391. State v. Fields.

Cuyahoga App. Nos. 109675 and 109680, 2022-Ohio-620.

2022-0398. Williams v. Williams.

Hamilton App. No. C-210331, 2022-Ohio-599.

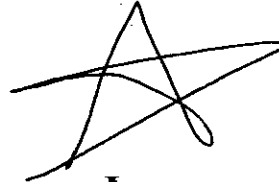
Brunner, J., dissents and would accept the appeal on proposition of law No. II.

2022-0401. Franklin Dissolution, L.P. v. Athenian Fund Mgt., Inc.
Cuyahoga App. No. 110641, 2022-Ohio-623.

Fischer, J., dissents.

Brunner, J., not participating.

2022-0403. Duncan v. Bartone.
Geauga App. No. 2021-G-0018, 2022-Ohio-755.



2022-0411. Talmadge Crossings, L.L.C. v. Andersons, Inc.
Lucas App. No. L-21-1113, 2022-Ohio-645.

2022-0412. In re Estate of Riddle.
Wood App. No. WD-21-041, 2022-Ohio-644.

2022-0430. State v. Townsend.
Cuyahoga App. No. 110525, 2022-Ohio-692.
Stewart, J., not participating.

2022-0432. State v. Rodenberg.
Delaware App. No. 21 CAA 05 0023, 2022-Ohio-713.

2022-0437. In re Sullivan.
Hamilton App. No. C-210217, 2022-Ohio-852.
DeWine, J., not participating.

2022-0440. In re G.T.
Richland App. No. 2021 CA 0066, 2022-Ohio-654.

O'Connor, C.J., and Fischer, J., dissent and would hold the cause for the decision in 2021-0857, *In re K.K.*

Stewart, J., dissents.

2022-0445. State v. Pardon.
Franklin App. No. 20AP-206, 2022-Ohio-663.

Fischer, J., not participating.

2022-0446. Estate of Campbell v. US Claims OPO, L.L.C.
Stark App. No. 2021CA00086, 2022-Ohio-711.

Brunner, J., dissents.

STATE OF OHIO

COUNTY OF GEAUGA

)
) SS.
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IN THE COURT OF APPEALS

ELEVENTH DISTRICT

ALEX DUNCAN,

Plaintiff-Appellant,

- v -

JENNIFER R. BARTONE, et al.,

Defendants-Appellees.

JUDGMENT ENTRY

CASE NO. 2021-G-0018

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 judgment of the Geauga County Court of Common Pleas is affirmed.

Costs to be taxed against appellant.


JUDGE CYNTHIA WESTCOTT RICE

THOMAS R. WRIGHT, P.J.,

MARY JANE TRAPP, J.,

concur.

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY**

ALEX DUNCAN,

Plaintiff-Appellant,

- v -

JENNIFER R. BARTONE, et al.,

Defendants-Appellees.

CASE NO. 2021-G-0018

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2021 M 000245

OPINION

Decided: March 14, 2022
Judgment: Affirmed

Alex Duncan, pro se, 14916 Thompson Avenue, Middlefield, OH 44062 (Plaintiff-Appellant).

Frank Leonetti, III, and Holly Marie Wilson, Reminger Co., LPA, 101 West Prospect Avenue, Suite 1400, Cleveland, OH 44115 (For Defendants-Appellees, Jennifer R. Bartone, Arthur Brite, Valarie Al Huffman, Kim Carter and NAMI (National Alliance of Mental Illness) Geauga County).

Bradley J. Barmen and Theresa A. Edwards, Lewis, Brisbois, Bisgaard & Smith, LLP, 1375 East 9th Street, Suite 2250, Cleveland, OH 44114 (For Defendants-Appellees, Terry D. Russell, NAMI Ohio and NAMI National).

CYNTHIA WESTCOTT RICE, J.

(¶1) Appellant, Alex Duncan, appeals the August 3, 2021 judgment of the Geauga County Court of Common Pleas dismissing his complaint. For the reasons set forth herein, the judgment is affirmed.

(¶2) This appeal stems from a 13-count complaint filed by appellant against eight defendants associated with the National Alliance on Mental Illness ("NAMI"). Apparently,

in 2021, appellant and his parents were asked to leave the Geauga branch of NAMI. Appellant's complaint alleged various vague claims and requested relief including lifetime membership to NAMI, the salary information for NAMI employees, and \$10 million.

{¶3} Defendant-appellees filed a motion to dismiss for failure to state a claim. Plaintiff-appellant opposed the motion and requested a hearing, which was denied. The court granted the motion to dismiss in a detailed judgment entry which analyzed each of appellant's claims and found that none of them stated a claim upon which relief could be granted.

{¶4} Appellant now appeals, assigning two errors for our review, which state:

{¶5} [1.] The trial court erred on its behalf by not giving Alex the full process of steps. The attorneys and I never met in "Discovery," Alex was walking on "Thin ice" and suffered the errors of the employees of the courthouse.

{¶6} [2.] Judge Paschke gave "Very little" credence on behalf of the miscues. The post office was late with "The answer" which made Alex filed a "Default Judgment." Alex still doesn't get the proper notifications of the docket. Alex has to check the docket every day to see what the status is. Alex mentioned these concerns to the Clerk of Courts. It's not an "Even playing field" at all despite when your "Pro se" and going against four attorneys. [sic throughout]

{¶7} Preliminarily we note that appellant's brief fails to comply with Loc.R. 16(C)(4); the law and argument section, which is four sentences long, fails to identify any errors in the record or further discuss his assigned errors. "We generally afford pro se litigants leeway in construing their filings." *State v. Hudson*, 11th Dist. Trumbull No. 2020-T-0092, 2021-Ohio-2642, ¶18. However, "[i]t is well established that pro se litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." (Citations omitted.) *Sabouri v. Ohio Dept. of Job & Family Serv.*, 145 Ohio App.3d 651, 654 (10th Dist.2001).

"[C]ourts should not assume the role of the advocate for the pro se litigant." *McGrath v. Mgt. & Training Corp.*, 11th Dist. Ashtabula No. 2001-A-0014, 2001 WL 1602740, *2 (Dec. 14, 2001), quoting *Ashiegbu v. Purviance*, 74 F.Supp.2d 740, 746 (S.D.Ohio 1998). (Emphasis deleted.)

{¶8} Moreover, "[a]n appellant 'bears the burden of affirmatively demonstrating error on appeal.'" *Tally v. Patrick*, 11th Dist. Trumbull No. 2008-T-0072, 2009-Ohio-1831, ¶22, quoting *Village of S. Russell v. Upchurch*, 11th Dist. Geauga Nos. 2001-G-2395 and 2001-G-2396, 2003-Ohio-2099, at ¶10. "It is not the obligation of an appellate court to search for authority to support an appellant's argument as to an alleged error. See *Kremer v. Cox* (1996), 114 Ohio App.3d 41, 60 * * *. Furthermore, if an argument exists that can support appellant's assignments of error, "it is not this court's duty to root it out." *Harris v. Nome*, 9th Dist. No. 21071, 2002-Ohio-6994." *Tally, supra*. "Accordingly, we may disregard an assignment of error that fails to comply with App.R. 16(A)(7)." *Tally, supra*.

{¶9} Moreover, even construing the facts in the light most favorable to appellant, we find no grounds for reversal. The trial court's judgment analyzed each of appellant's 13 counts. It found in each case that appellant failed to allege facts stating a claim.

{¶10} Specifically, as to appellant's first claim, "Harassment," the trial court found that Ohio does not recognize a common law tort of harassment, nor any common law or statute which prohibits threatening an individual with law enforcement, taking private information to the police, or making ridiculous accusations, and that appellant did not allege telecommunications harassment.

{¶11} In regard to his second claim, entitled "Grievance rights," the trial court found that the Ohio Revised Code section appellant cited to did not exist. It assumed

appellant meant to cite to O.A.C. 5122-26-18 but noted that section applies only to certain agencies funded by certain enumerated sources and that appellant made no allegation that any defendant was funded by any of the enumerated sources.

{¶12} His third claim, entitled "Code of ethics," and his fifth claim alleging discrimination, cite the ADA, the O.A.C., and R.C. 4112.012. The trial court found that appellant failed to show facts that his impairments substantially limited one or more of his major life activities; as such, he was unable to show the applicability of any of the cited laws. Further, the trial court found that appellant failed to show that any defendant constructed or altered a facility used by a public entity for public accommodation since March 15, 2012, which is the effective date relevant to the CFR sections cited by appellant. The trial court also determined that R.C. 4757.02(A)(1) was inapplicable as appellant failed to allege any facts showing any defendant is a licensed counselor, therapist, or social worker. It also found that R.C. 2921.03 was inapplicable as appellant did not show he was a public servant, party official, attorney, was involved as a witness in a civil action, or that any defendant attempted to intimidate him. Finally, the trial court found that 18 U.S.C. § 249(A)(2) was inapplicable as appellant alleged no facts showing any defendant used interstate or foreign commerce facilities or willfully bodily injured or attempted to injure appellant, as required by that section.

{¶13} Appellant's fourth claim, entitled "Trust broken," cites R.C. 1303.37 and R.C. 2137.14 which require a showing that a defendant owed appellant a fiduciary duty. The trial court found that appellant made no such showing.

{¶14} Appellant's sixth claim, "Retaliation", and seventh claim, "Interfering with Civil Rights," and cite violations of R.C. 2921.05 and R.C. 2921.45. However, the trial

court found that appellant did not make the required showing that he was a public servant, party official, attorney, or witness involved in any proceeding.

{¶15} Appellant's eighth claim, "Abuse," cites a section of the O.A.C. applicable to the Ohio Department of Job and Family Services ("ODJFS"), but that appellant made no allegation involving ODJFS. The trial court also found that appellant failed to allege facts necessary for a showing of intentional infliction of emotional distress or negligent infliction of emotion distress, as alleged in his eighth and thirteenth claim.

{¶16} Appellant's ninth claim, "Dereliction of Duty," cites R.C. 2921.44, applicable to public servants. The trial court found that appellant did not allege any facts showing any defendant was a public servant.

{¶17} Appellant's tenth claim, "Supplementing rules with operating manuals," cites to R.C. 4121.32, which deals with the Industrial Commission or Bureau of Workers' Compensation, but as the trial court found, appellant alleged no facts showing workers' compensation was involved with his complaint.

{¶18} Appellant's eleventh claim alleged libel and slander stemming from a comment from a defendant that "the Duncan's are 'crazy.'" The trial court found that statement to be one of opinion, not fact, and thus appellant could not make the requisite showing required to prove defamation. It also found that appellant did not show any defendant published false statement of fact.

{¶19} Finally, appellant's twelfth claim alleged "Liability." The trial court stated that liability is a legal conclusion and that he failed to allege facts stating a claim involving any liability.

{¶20} On appeal, appellant has not put forth any argument, law, or fact that would warrant reversal.

{¶21} In light of the foregoing, the judgment of the Geauga County Court of Common Pleas is affirmed.

THOMAS R. WRIGHT, P.J.,

MARY JANE TRAPP, J.,

concur.

IN THE COURT OF COMMON PLEAS
GEAUGA COUNTY, OHIO

ALEX DUNCAN,	:	CASE NO. 21M000245
	:	
Plaintiff,	:	
	:	JUDGE CAROLYN J. PASCHKE
-vs-	:	
	:	
JENNIFER R. BARTONE, et al.,	:	
	:	DECISION AND JUDGMENT
Defendants.	:	

This matter is before the Court on:

- 1. "Defendants NAMI National, NAMI Ohio, and Terry D. Russell's Motion to Dismiss Plaintiff's Complaint" filed on May 14, 2021. See Civ.R. 12(B)(6);
- 2. "Motion to Dismiss" filed by defendants Jennifer R. Bartone, Arthur Brite, Valarie D. Huffman, Kim Carter, and NAMI Geauga" on May 20, 2021; and
- 3. Plaintiff Alex Duncan's ("Mr. Duncan") oppositions to the Motions to Dismiss and his requests for oral hearings filed June 29, 2021, and July 6, 2021.

I. Findings.

Mr. Duncan, a self-represented litigant, believes the eight defendants, NAMI National, NAMI Ohio, Terry D. Russell, Jennifer R. Bartone, Arthur Brite, Valarie D. Huffman, Kim Carter, and NAMI Geauga (individually by name, jointly "defendants") violated his rights, harassed him, and terminated him from NAMI activities.

On April 15, 2021, without attaching or incorporating any exhibits, Mr. Duncan filed a 13 count Complaint. Mr. Duncan captioned his claims:

- 1. Harassment;
- 2. Grievance rights;
- 3. Code of ethics;

4. Trust broken;
5. Discrimination;
6. Retaliation;
7. Interfering with civil rights;
8. Abuse;
9. Dereliction of duty;
10. Manuals;
11. Defamation of character;
12. Liability;
13. Negligent infliction of emotional distress.

As relief, Mr. Duncan demanded:

1. Lifetime NAMI membership for himself and his parents;
2. NAMI pay court costs and "any other surprises;"¹
3. NAMI "follow and enforce the public records policies and laws in Ohio;"
4. To receive "the agenda's of the NAMI board meeting from Chesterland, Ohio office since July '19;"
5. "List of salaries of the NAMI employees since July '19;"
6. Ten million dollars (\$10,000,000);
7. "NAMI (To all levels) follow and obey all laws and statutes of government." See Complaint, ¶¶ 64-65, 67-71.

¹ All quoted statements are as in the original.

II. Law and Analysis.

A. Motion to Dismiss for Failure to State a Claim: Civil Rule 12(B)(6).

An adequate complaint contains a short and plain statement of facts showing entitlement to relief. *See* Civ.R. 8(A). The adequacy of a complaint is purely a legal issue. *See Columbus Metro. Hous. Auth. v. Flowers*, 10th Dist. Franklin Nos. 05AP-87 and 05AP-372, 2005-Ohio-6615, ¶ 18.

In ruling on a motion to dismiss for failure to state a claim, the court: (1) accepts all factual allegations in the complaint as true; (2) considers all clear and unambiguous attached exhibits; (3) makes all reasonable inferences in favor of the non-moving party; (4) disregards conclusory allegations; and (5) disregards materials which are not part of the complaint. *See* Civ.R. 10(D)(1) and 12(B)(6); *Arms Trucking Co. v. Fannie Mae*, 11th Dist. Geauga 2014-G-3186, 2014-Ohio-5077, ¶ 22; *Whelan v. Vanderwist of Cincinnati, Inc.*, 11th Dist. No. 2010-G-2999, 2011-Ohio-6844, ¶ 11; *Radtke v. Chester Twp.*, 2015-Ohio-4016, 44 N.E.3d 295 (11th Dist., Geauga) ¶ 18.

While detailed factual allegations are not necessary, the complaint must describe the defendants' conduct. *See* Civ.R. 8(A); *Pugh v. Warden of LaECI*, 11th Dist. Ashtabula No. 2019-A-0031, 2019-Ohio-3615, ¶ 46. A complaint may be dismissed when its essential allegations are: (1) conclusory; (2) contradicted by attached or incorporated documents; (3) lacking factual support; or (4) otherwise insufficient to show an essential element of the claim. *See Gasper v. Bank of Am., N.A.*, 9th Dist. Medina No. 17CA0091-M, 2019-Ohio-1150, ¶ 35.

B. Mr. Duncan's claims.

1. Harassment.

Mr. Duncan alleged he was "harassed from the unethical behaviors from the personal of NAMI. ORC 2917.21...[was] threaten with law enforcement...[and] NAMI Geauga made such ridiculous accusations...Ms. Huffman went to the Middlefield Police...due to insufficient reasons." *See* Complaint, ¶¶ 30-33.

While Ohio does not appear to recognize a common law tort of harassment, telecommunications harassment is prohibited by state law. *Compare* R.C. 2903.211 and .214.

a. Telecommunications harassment: R.C. 2917.21.

Mr. Duncan alleged "The Duncan's were harassed from the unethical behaviors from the personal of NAMI. ORC 2917.21." *See* Complaint, ¶ 30.

Criminal acts include knowingly using "telecommunication with purpose to harass, intimidate, or abuse," involving sexual activities, and threatening property destruction. *See* R.C. 2917.21(A)(1). While anyone injured "by a criminal act has, and may recover full damages in, a civil action," the plaintiff must show a criminal act occurred. *See* R.C. 2307.60(A)(1); *Buddenberg v. Weisdack*, 161 Ohio St.3d 160, 2020-Ohio-3832, 161 N.E.3d 603, ¶¶ 1-2.

Mr. Duncan did not allege facts showing defendants: (1) acted knowingly; (2) used a telecommunication device; (3) with the purpose; and (4) to harass, intimidate, abuse, or engage in sexual activity with him. Additionally, Mr. Duncan did not allege facts showing the method and content of defendants' communications. Mr. Duncan failed to allege facts showing telecommunications harassment; Mr. Duncan failed to allege facts stating a claim.

b. Threaten with law enforcement.

Mr. Duncan alleged "the Duncan's were threatened with law enforcement" and "Valarie Huffman...took private information to the Middlefield Police." *See* Complaint, ¶ 4.

Mr. Duncan did not identify any common law or statute which prohibits: (1) threatening an individual with law enforcement; or (2) taking private information to the police.

Mr. Duncan alleges no facts showing: (1) Ms. Huffman's actions were not legitimate and lawful; or (2) whose private information was taken to the police, the contents of the information, or the reason it was taken to the police. Mr. Duncan failed to allege facts stating a claim.

c. Ridiculous accusations.

Mr. Duncan alleged Jennifer Bartone wrote letters telling Mr. Duncan and his parents not to come to NAMI's office. "NAMI Geauga made such ridiculous accusations from their various kinds of communications." *See Complaint, ¶ 32.*

Mr. Duncan did not identify any common law or statute which prohibits making ridiculous accusations.

Mr. Duncan failed to allege facts showing: (1) the substance of the allegations; or (2) the manner in which they were made. *See also R.C. 2917.21.* Mr. Duncan failed to allege facts showing defendants made ridiculous accusations; Mr. Duncan failed to allege facts stating a claim.

2. Grievance rights: ORC 5122-26-18. (NAMI Geauga and Jennifer Bartone)

Mr. Duncan alleged, "NAMI Geauga has no idea how . . . this procedure works. ORC 5122-26-18 . . . Jennifer Bartone had no idea she was the 'Clients Rights Officer,' . . . [and] NAMI Geauga violated the 1st Amendment of the USA Constitution. 'The 'Redress of Grievances.' Plus the 5th, 6th, 7th, 9th, 14th amendments were violated too." *See Complaint, ¶¶34-36.*

Ohio Revised Code does not contain "5122-26-18." *See Complaint, ¶34.*

O.A.C.² Chapter 5122-26 sets out "Policies and Procedures for the Operation of Mental Health Services Agencies" funded by: (1) The Ohio Medicaid program for community mental health or community addiction services; (2) A board of alcohol, drug addiction, and mental health services; or (3) Federal or department block grant funding for certified services. Unless an agency is funded by one of these sources, the provisions of O.A.C. 5122-26 do not apply.

While O.A.C. 5122-26-18 is "client rights and grievance procedure," Mr. Duncan does not allege NAMI Geauga or Ms. Bartone are funded by any of the covered sources. Mr. Duncan failed to allege facts showing NAMI Geauga and Ms. Bartone are required to provide grievance procedures; Mr. Duncan failed to allege facts stating a claim.

3. Code of ethics.

Mr. Duncan alleged multiple ethical violations and cited the ADA,³ the O.A.C., and intimidation.

a. Equal opportunity for individuals with disabilities ("ADA"): 42 U.S.C. Chapter 126, §§ 12131-12134.

Any person alleging discrimination in violation of the ADA may seek a remedy. See 42 U.S. Code § 12117(a). Mr. Duncan alleges:

1. "Title 2 'State and Local Government' and Title 3 'Public accommodations and commercial facilities' from the ADA were violated by NAMI." See Complaint, ¶44.
2. "Jennifer allowed dogs from the employees and herself to freelance around [the] building. There are people who have allergies and etc from animals." See Complaint, ¶37.

² Ohio Administrative Code. "The Ohio Administrative Code does not create a private cause of action for violation of its rules." See *Brunnitt v. Seeholzer*, 6th Dist. Erie Nos. E-16-020-E18-029, 2019-Ohio-1555, ¶ 31.

³ Americans with Disabilities Act, also known as Equal opportunity for individuals with disabilities.

3. "NAMI does not currently support the '2010 ADA Standards'...OAC 5112-14-11!"

See Complaint, ¶41.

i. Title 2 and Title 3 violation of ADA.

1. ADA in general.

Mr. Duncan alleged having "rear neurological concerns and Autism". See Complaint, ¶ 12.

The purposes of the ADA include providing "enforceable standards addressing discrimination against individuals with disabilities." See 42 U.S.C. § 12101(b)(2). A disabled person has, had, or is regarded as having "a physical or mental impairment that substantially limits one or more major life activities." See 42 U.S.C. § 12102(1). Major life activities include self-care, "learning, reading, concentrating, thinking, communicating, and working." See 42 U.S.C. § 12102(2).

Not every physical or mental condition from which a person suffers constitutes a disability. See R.C. 4112.01(A)(13); 42 U.S.C. § 12102(3), *City of Columbus Civ. Serv. Comm. v. McGlone*, 82 Ohio St.3d 569, 571-574, 1998-Ohio-410, 697 N.E.2d 204; *Maloney v. Barberton Citizens Hosp.* (1996), 109 Ohio App.3d 372, 377-378, 672 N.E.2d 223.

Mr. Duncan did not allege facts showing these impairments substantially limited one or more of his major life activities. As Mr. Duncan failed to allege facts showing he is a "qualified individual with a disability," he is unable to establish any claim involving the ADA. See 42 U.S.C. § 12131(2). Mr. Duncan failed to allege facts stating a claim.

2. U.S.C. Title 42, Chapter 126, Subchapter II.

Mr. Duncan alleged ADA "Title 2 'State and Local Government' ...[was] violated by NAMI." See Complaint, ¶ 44.

ADA Subchapter II governs public entities. *See* 42 U.S.C. § 12131(1). A public entity is "(A) any State or local government; (B) any department, agency, special purpose district, or other instrumentality of a State or States or local government; and (C) the National Railroad Passenger Corporation, and any commuter authority." *See* 42 U.S. Code § 12131(1).

While the law prohibits a public entity from excluding qualified individuals with a disability from public services, programs, or activities, Mr. Duncan alleged no facts showing he was a qualified individual or any defendant was a public entity. *See* 42 U.S. Code § 12131(1) and (2). Mr. Duncan failed to allege facts stating a claim.

3. U.S.C. Title 42, Chapter 126, Subchapter III.

Mr. Duncan alleged ADA "Title 3 'Public accommodations and commercial facilities'... [was] violated by NAMI." *See* Complaint, ¶ 44.

Title III prohibits disability discrimination in certain: (1) public accommodations; and (2) services operated by private entities. The public accommodations and services must be engaged in interstate or foreign commerce. *See* 42 U.S.C. § 12181(1), (6), and (7).

To establish a Title III claim, Mr. Duncan must allege facts showing: (1) he is a "qualified individual with a disability;" (2) defendants are engaged in interstate or foreign commerce; and (3) defendants discriminated against Mr. Duncan. *See Reid v. Plainsboro, III*, 10th Dist. Franklin Nos. 09AP-442, 09AP-456, 2010-Ohio-4373, ¶¶ 21-25; 42 U.S.C. §§ 12131(2) and 12182.

Mr. Duncan did not allege facts showing: (1) he was a qualified person with a disability; (2) any defendant is involved in interstate or foreign commerce; and (3) defendants discriminated against him. Mr. Duncan failed to allege facts stating a claim.

ii. Dogs around the building.

Mr. Duncan alleged "Jennifer allowed dogs from the employees and herself to freelance around [the] building. There are people who have allergies and etc from animals." *See* Complaint, ¶ 37.

Mr. Duncan did not identify any common law or statute prohibiting defendants from allowing dogs in the building.

Mr. Duncan does not allege any facts showing the presence of dogs impacted him or others; Mr. Duncan failed to allege facts stating a claim.

iii. 2010 ADA standards for Accessible Designs and O.A.C. 5112-14-11.⁴

Mr. Duncan alleged "NAMI does not currently support the '2010 ADA standards for Accessible Designs' ('2010 Standards')." *See* Complaint, ¶ 41; 28 C.F.R. § 35.151.

These 2010 Standards require certain new and altered facilities to be "readily accessible to and usable by individuals with disabilities." *See* 28 C.F.R. § 35.151(a)(1) and (2); 28 C.F.R. part 36, subpart D.

Unless structurally impracticable, facilities constructed or altered after March 15, 2012, "for the use of a public entity" and places of public accommodations must comply with the 2010 Standards. *See* 28 CFR § 35.151(a)(1) and (2); 28 C.F.R. part 36, subpart D.

Mr. Duncan failed to allege facts showing: (1) any defendant did not "support" the 2010 Standard; and (2) since March 15, 2012, any defendant constructed or altered a facility used by a public entity or for public accommodation. Mr. Duncan failed to allege facts stating a claim.

b. Counselor, Social Worker, and Marriage and Family Therapist Board; O.A.C. Chapter 4757.

⁴ There is no such Administrative Code section. *See* O.A.C. 5112.

Mr. Duncan alleges "There were no 'Checks and Balances' with any of the NAMI organizations and etc. No accountability nor responsibility. Blame the victim was much easier! OAC 4757-5." See Complaint, ¶ 38.

O.A.C. Chapter 4757 deals with the "Counselor, Social Worker, and Marriage and Family Therapist Board." It requires licensed counselors, social workers, and therapists to comply with certain standards of ethical practice and professional conduct. See R.C. 4757.02(A)(1); O.A.C. 4757-3-01 and -05.

Furthermore, "the Ohio Administrative Code does not create a private cause of action for violation of its rules." See *Drummitt v. Seeholzer*, 6th Dist. Erie Nos. E-16-020-E18-029, 2019-Ohio-1555, ¶31; O.A.C. 4757-5-01(C).

Mr. Duncan failed to allege facts showing any defendant is licensed as a counselor, social worker, or therapist; therefore O.A.C. 4757-5 does not apply. Mr. Duncan failed to allege facts stating a claim.

c. Intimidation: R.C. 2921.03.

Mr. Duncan alleges "Intimidation was a plan to get rid of the Duncan's. ORC 2921.03." See Complaint, ¶ 42.

The statute cited by Mr. Duncan prohibits attempts to intimidate "a public servant, a party official, or an attorney or witness involved in a civil action or proceeding." See R.C. 2921.01(B) and .03

Mr. Duncan alleged no facts showing: (1) he was a public servant, a party official, or an attorney; (2) he was involved as a witness in a civil action or proceeding; or (3) any defendant attempted to intimidate him. Mr. Duncan failed to allege facts stating a claim.

d. The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009: 18 U.S.C. § 249,

Mr. Duncan alleged "I believe there were hate crimes intended in this whole ordeal... The Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act of 2009" (the "Act"). *See* Complaint, ¶ 45.

The Act: (1) prohibits use of interstate or foreign commerce facilities; (2) to willfully bodily injure or attempt to bodily injure; (3) a person because of disability. *See* 18 U.S.C. § 249(A)(2).

Mr. Duncan alleged no facts showing any defendant: (1) used interstate or foreign commerce facilities; and (2) willfully bodily injured or attempted to bodily injure Mr. Duncan. Mr. Duncan failed to allege facts stating a claim.

4. Trust broken: R.C. 1303.37 and 2137.14.

Mr. Duncan alleged "The breach of Fiduciary Duty occurred from within NAMI and outside the organization. ORC 1303.37!...Lying inside the organization created this concern to rise even more...ORC 2137.14." *See* Complaint, ¶¶ 46-47.

a. Notice of breach of fiduciary duty: R.C. 1303.37.

Mr. Duncan alleged "The breach of Fiduciary Duty occurred from within NAMI and outside the organization. ORC 1303.37." *See* Complaint, ¶ 46.

R.C. Chapter 1303 deals with certain financial obligations known as commercial paper. Sometimes those dealing with commercial paper owe fiduciary duties to others. *See* R.C. 1303.37(A)(1) and (2).

Mr. Duncan alleged no facts: (1) showing he was involved in any commercial transaction with any defendant; (2) any defendant is a fiduciary; or (3) any defendant owes a fiduciary duty to him. *See* R.C. 1303.02(A); *see generally* R.C. Ch. 1303. Mr. Duncan failed to allege facts stating a claim.

b. Fiduciary duty and authority: R.C. 2137.14.

Mr. Duncan alleged "Lying inside the organization created this concern to rise even more...ORC 2137.14." *See* Complaint, ¶ 47.

R.C. Title 21 deals with probate courts. R.C. Chapter 2137 is the "Uniform Fiduciary Access to Digital Assets Act." The Act imposes certain duties on a fiduciary charged with managing digital assets. *See* R.C. 2137.14.

Mr. Duncan alleged no facts showing: (1) probate court involvement; (2) any defendant is a fiduciary; (3) any defendant owes Mr. Duncan a fiduciary duty; (4) the existence of any digital assets; or (5) any defendant manages digital assets. Mr. Duncan failed to allege facts stating a claim.

5. Discrimination.

Mr. Duncan alleged "NAMI doesn't always treat everyone the same. Terry Russel mentioned how selective...NAMI [Ohio] is with concerns. ORC 4112.012.⁵ NAMI Geauga allows only paid members to it's meetings despite tax payer money goes to the organization. NAMI Geauga doesn't reach out the Amish Culture anymore." *See* Complaint, ¶¶ 48-50.

a. Civil Rights Commission: R.C. Chapter 4112.

i. Stating a claim for a civil rights violation: R.C. Chapter 4112.

Mr. Duncan alleged he: (1) "has rear neurological concerns and Autism"; and (2) was in special education from "third grade to graduation". *See* Complaint, ¶¶ 12, 22.

It is an unlawful discriminatory practice "for any...employee...or manager of a place of public accommodation to deny to any person, except for reasons applicable alike to all persons regardless of race, color, religion, sex, military status, national origin, disability, age, or ancestry,

⁵ There is no such Revised Code section.

the full enjoyment of the accommodations, advantages, facilities, or privileges of the place of public accommodation.” See R.C. 4112.02(G).

To state a claim Mr. Duncan must allege facts showing: (1) he was a member of a protected class; (2) his conduct was no worse than that of other NAMI participants or members; and (3) his conduct would not have led defendants to treat him differently than a member of a non-protected class. See *Smedley v. Dunkin Doughnuts*, 8th Dist. Cuyahoga No. 73740, 1998 Ohio App. LEXIS 6112, * 9 (Dec. 17, 1998.)

Not every physical or mental condition from which a person suffers constitutes a disability. See R.C. 4112.01(A)(13); 42 U.S.C. § 12102(3), *City of Columbus Civ. Serv. Comm. v. McGlone*, 82 Ohio St.3d 569, 571-574, 1998-Ohio-410, 697 N.E.2d 204; *Maloney v. Barberton Citizens Hosp.* (1996), 109 Ohio App.3d 372, 377-378, 672 N.E.2d 223. Handicap discrimination laws protect those “who live with a handicap that significantly affects the way they live their lives on a day-to-day basis.” See *Columbus Civ. Serv. Comm. v. McGlone* (1998), 82 Ohio St.3d 569, 572, 1998 Ohio 410, 697 N.E.2d 204.

Mr. Duncan did not allege facts showing: (1) his impairment significantly affects the way they live their lives on a day-to-day basis; (2) he has a record of a disability significantly affecting his day to day life; or (3) he is regarded as having a disability which significantly affects his day to day life. Mr. Duncan failed to allege facts stating a claim.

ii. Mr. Duncan’s allegations of disability: R.C. 4112.01(A)(13).

Mr. Duncan alleged he: (1) “has rear neurological concerns and Autism”; and (2) was in special education from third grade to graduation. See Complaint, ¶¶ 12, 22.

Under Ohio law a disability is “a physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one’s self, performing

manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working; a record of a physical or mental impairment; or being regarded as having a physical or mental impairment.”

See R.C. 4112.01(A)(13).

Mr. Duncan failed to allege facts showing he has a disability as defined by Ohio law; Mr. Duncan failed to allege facts stating a claim.

iii. Mr. Duncan’s conduct and treatment.

Mr. Duncan alleges “NAMI doesn’t always treat everyone the same.” *See* Complaint, ¶ 48.

Mr. Duncan did not identify any common law or statute prohibiting NAMI from treating individuals differently.

Mr. Duncan failed to allege facts showing his own conduct and the conduct of other NAMI participants or members. Mr. Duncan failed to allege facts showing defendants treated him differently than they would have treated members of a non-protected class. Mr. Duncan failed to allege facts stating a claim.

b. Paid membership requirement.

Mr. Duncan alleges “NAMI Geauga only allows paid members to it’s meetings despite tax payer money goes to the organization.” *See* Complaint, ¶ 49.

Mr. Duncan did not identify any law or statute prohibiting defendants from charging membership fees.

Mr. Duncan failed to allege facts showing: (1) NAMI Geauga requires all members to pay a membership fee; and (2) any restrictions imposed by receipt of taxpayer funds. Mr. Duncan failed to allege facts stating a claim.

c. Reaching out to the Amish.

Mr. Duncan alleged 'NAMI Geauga doesn't reach out the Amish Culture anymore.' *See* Complaint, ¶ 50.

Mr. Duncan did not identify any common law or statute requiring NAMI Geauga to reach out to the Amish culture.

Mr. Duncan failed to alleged facts supporting his allegation; Mr. Duncan failed to allege facts stating a claim.

6. Retaliation: R.C. 2921.05.

Mr. Duncan alleged, ". . . the Duncan's were abuse from the chaotic behaviors and motives from NAMI. They retaliated against the Duncan's. . . ORC 2921.05." *See* Complaint, ¶ 51.

Ohio law prohibits using purposeful force or threats to "retaliate against a public servant, a party official, or an attorney or witness who was involved in a civil or criminal action or proceeding." *See* R.C. 2921.01(B) and .05.

Mr. Duncan failed to allege facts showing: (1) any defendant acted purposefully, (2) he was a public servant, party official, or an attorney or witness involved in a civil or criminal action or proceeding; or (3) any retaliatory actions. Mr. Duncan failed to allege facts stating a claim.

7. Interfering with Civil Rights: R.C. 2921.45.

Mr. Duncan alleged he was not granted "the rights they should have been given. ORC 2921.45. Plus the Ohio Constitution, 9th, and 14th Amendments." *See* Complaint ¶ 52.

Public servants are prohibited from knowingly depriving others of constitutional or statutory rights. *See* R.C. 2921.01(B) and .45.

Mr. Duncan failed to allege facts showing: (1) any defendant was a public servant; or (2) any defendant knowingly acted to deprive Mr. Duncan of constitutional or statutory rights. Mr. Duncan failed to allege facts stating a claim.

8. Abuse.

Mr. Duncan alleged "NAMI Intentionally to create abuse with the Duncan's. OAC 5101:09-14...NAMI Created so much unneeded drama and stress....The 'Intentional infliction of emotional distress' was unbearable. *Harris Vs Jones* 1977!"⁶ See Complaint, ¶¶ 53-54.

a. Ohio Department of Job and Family Services ("ODJFS") Practices: O.A.C. 5101:9.⁷

Mr. Duncan alleged "NAMI Intentionally to create abuse with the Duncan's. OAC 5101:09-14." See Complaint, ¶ 53.

O.A.C. 5101:9 governs the Ohio Department of Job and Family Services (ODJFS) Division of Public Assistance.

Mr. Duncan made no allegation involving ODJFS or its Division of Public Assistance. Mr. Duncan failed to allege facts stating a claim.

b. Intentional infliction of emotional distress.

Mr. Duncan alleged "NAMI Created so much unneeded drama and stress..." See Complaint, ¶ 54.

To state a claim for intentional infliction of emotional distress Mr. Duncan must allege facts showing: (1) the defendants intended to cause him serious emotional distress; (2) the defendant's conduct was extreme and outrageous; and (3) the defendant's serious emotional

⁶ *Harris v Jones*, 35 Md. App. 556, 371 A.2d 1104 (1977).

⁷ There is no such Administrative Code section.

distress was proximately caused by defendants. *See Phung v. Waste Mgt., Inc.*, 71 Ohio St.3d 408, 410-411, 1994-Ohio-389, 644 N.E.2d 286.

Mr. Duncan failed to allege facts showing: (1) any defendant intended to cause him serious emotional distress or knew or should have known their conduct would cause serious emotional distress; (2) any defendant's conduct was extreme and outrageous; and (3) Mr. Duncan suffered serious emotional distress. Mr. Duncan failed to allege facts stating a claim.

9. Dereliction of duty: R.C. 2921.44.

Mr. Duncan alleged "NAMI in all levels neglected their duties...ORC 2921.44!" *See* Complaint, ¶ 55.

Ohio law prohibits public servants from recklessly failing to perform certain duties. *See* R.C. 2921.01(B) and .44(E).

Mr. Duncan failed to allege facts showing any defendant: (1) was a public servant; (2) acted recklessly; or (3) failed to perform certain duties. *See* R.C. 2921.44(E). Mr. Duncan failed to allege facts stating a claim.

10. Supplementing rules with operating manuals: R.C. 4121.32.

Mr. Duncan alleged "NAMI had no idea what the manuals of the organization could be used when it started on day 1. ORC 4121.32." *See* Complaint, ¶ 56.

R.C. Chapter 4121 deals with the Industrial Commission; Bureau of Workers' Compensation. R.C. 4121.32 requires supplementing "rules covering operating procedure and criteria for decision-making... with operating manuals."

Mr. Duncan alleges no facts showing workers' compensation is in any way involved with Mr. Duncan's Complaint. Mr. Duncan failed to allege facts stating a claim.

11. Libel and slander: ORC 2739.01.

Mr. Duncan alleged "The reputation of the Duncan's were tarnished by NAMI... Outsiders were informed of what was going on. People from the group (The Duncan's attend) wondering what happened to us. ORC 2739.01!...Valerie heard the Duncan's are 'Crazy.' She also mentioned about harassment too from when she went to the Middlefield Police...showed the police the forms of the participants...Which included confidential information." See Complaint ¶¶ 57-58.

A claim of libel involves writing; a claim of slander involves speech. See *Missionaries of the Sacred Heart, Inc. v. Ohio Dept. of Youth Servs.*, 10th Dist. Franklin No. 19AP-872, 2020-Ohio-5596, ¶ 15; *Cruse v. Shasta Beverages, Inc.*, 10th Dist. No. 11AP-519, 2012-Ohio-326, ¶ 46.

"In an action for a libel or slander, it is sufficient to state, generally, that the defamatory matter was published or spoken of the plaintiff... it is not necessary to set out any obscene word, but it is sufficient to state its import." See R.C. 2739.01. Mr. Duncan is not required to specify the defamatory words or the identity of the persons uttering or hearing them. See *Nationwide Roofing & Sheet Metal, Inc. v. Cincinnati Ins. Co.*, 2d Dist. Montgomery Case No. CA 12383, 1991 Ohio App. LEXIS 2105, * 3 (May 9, 1991).

To state a defamation claim, Mr. Duncan must allege facts showing: (1) a defendant made a false statement of fact; (2) the statement was defamatory, (3) the statement was published, (4) as a proximate result of the publication, Mr. Duncan sustained injury; and (5) a defendant acted with the requisite degree of fault in publishing the statement. See *Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶ 77; *Jackson v. City of Columbus*, 117 Ohio St.3d 328, 2008-Ohio-1041, 883 N.E.2d 1060, ¶ 9; R.C. 2739.01.

The Court decides if words are defamatory. *See Am. Chem. Soc. v. Leadscope, Inc.*, 133 Ohio St.3d 366, 2012-Ohio-4193, 978 N.E.2d 832, ¶ 77.

When the plaintiff is a private person, negligence is the requisite degree of fault. *See Lansdowne v. Beacon Journal Pub. Co.*, 32 Ohio St.3d 176, 178, 512 N.E.2d 979 (1987).

The statement “the Duncan’s are ‘Crazy’” is a statement of opinion, not fact.

Mr. Duncan did not allege any facts showing any defendant: (1) published a false statement of fact; or (2) breached a duty to investigate the truth of their statements. *See Pugh v. Warden of LaECI*, 11th Dist. Ashtabula No. 2019-A-0031, 2019-Ohio-3615, ¶¶ 46 and 51-59. Mr. Duncan failed to allege facts stating a claim.

12. Liability.

Mr. Duncan alleges: (1) Not only the Duncan’s getting nefarious treatment from NAMI, but others too;” (2) he “heard...NAMI Geauga has a lot of other problems...Also heard a man with a gun wanted revenge too;” (3) the Amish are not involved and there is no diversity; and (4) “NAMI Geauga had no idea how to work and operate for the public.” *See Complaint*, ¶ 59-61.

Liability is a legal conclusion.

Mr. Duncan failed to allege facts stating a claim.

13. Negligent infliction of emotional distress.

Mr. Duncan alleges “the drama and tension of dealing with this was a conundrum. Everyone from NAMI showed and portrayed hate to the Duncan’s.” *See Complaint*, ¶ 62-63.

To state a claim for negligent infliction of emotional distress, factual allegations must show: (1) as a result of negligent behavior; (2), the plaintiff was placed in fear of personal physical consequences; (3) the plaintiff reasonably appreciated the peril; and (4) the plaintiff suffered serious and foreseeable emotional distress as a result. *See Tackas-Davis v. Concorde*

Castings, 11th Dist. Lake Case No. 99-L-035, 2000 Ohio App. LEXIS 5920 (Dec. 15, 2000) *

18.


To state a claim the plaintiff must: (1) witness or be exposed to physical calamity; and (2) suffer serious emotional distress or a physical injury from the calamity. *See Heiner v. Moretuzzo*, 73 Ohio St.3d 80, 86-87 1995-Ohio-65, 652 N.E.2d 664.

Mr. Duncan failed to allege facts showing any negligent act or he (1) witnessed or was exposed to physical calamity; and (2) suffered serious emotional distress or a physical injury. Mr. Duncan failed to allege facts stating a claim.

Decision and Order.

1. "Defendants NAMI National, NAMI Ohio, and Terry D. Russell's Motion to Dismiss Plaintiff's Complaint" filed on May 14, 2021, is granted.
2. The "Motion to Dismiss" filed by defendants Jennifer R. Bartone, Arthur Brite, Valarie D. Huffman, Kim Carter, and NAMI Geauga" on May 20, 2021, is granted.
3. Plaintiff Alex Duncan's requests for oral hearings filed June 29, 2021, and July 6, 2021, are denied.

IT IS SO ORDERED.



CAROLYN J. PASCHKE, JUDGE

TO THE CLERK:

Serve upon all parties, not in default for failure to appear [per Civil Rule 5-(B)], notice of this Judgment and its date of journalization.