IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT OF OHIO
LAKE COUNTY, OHIO

BRYAN ANTHONY REO :

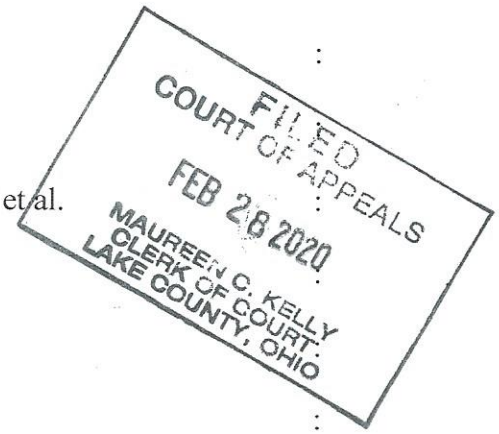
Appellant, :

vs. :

MARTIN LINDSTEDT et al. :

Appellee. :

Case #- 2019-L-136
Case #- 2019-L-137



ASSIGNMENT OF ERRORS AND BRIEF OF BRYAN ANTHONY REO PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

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STATEMENT OF THE CASE

PROCEDURAL POSTURE

This case originated in the Lake County Court of Common Pleas in Painesville, Lake County, Ohio as 15CV001590 with the complaint filed on September 18, 2015 and 16CV000825 with that complaint transferred to Lake County Court of Common Pleas on May 13, 2016 [the 16CV000825 case in Lake County Common Pleas began in Mentor Municipal Court as CVE1600245 on 3/22/2016 and was transferred to Lake County Common Pleas on 5/16/2016], with the two cases consolidated in Lake County Court of Common Pleas for all filings, proceedings, and trial. The complaints alleged a number of intentional torts, primarily defamation, libel per se, invasion of privacy (false light), intrusion on seclusion, intentional infliction of emotional distress, and other related torts, as well as statutory criminal liability per R.C. § 2307.60. Plaintiff-Appellant prevailed on the merits of his most significant claims [defamation/libel per se and false light] at a jury trial which concluded on June 26, 2019 in the trial of the consolidated cases, with a verdict returned in Plaintiff-Appellant's favor. A directed verdict was granted in favor of Plaintiff-Appellant as to 9 of Defendant-Appellee's 10 counterclaims, and the jury found in Plaintiff-Appellant's favor as to the sole remaining counterclaim of Defendant-Appellant. Tellingly, the trial court, when granting Plaintiff-Appellant's motion for a directed verdict, found that some of Defendant-Appellee's counterclaims were not even valid or cognizable causes of action (T.d. 172 p.g. 3-5 in 15CV001590). The jury returned a verdict in favor of Plaintiff-Appellant in the amount of $105,400.00 [one hundred and five thousand and four hundred dollars] against Defendant-Appellant.

Judgment was duly entered and recorded on July 1, 2019 based upon the $105,400.00 (T.d. 174 in 15CV001590)

Plaintiff-Appellant timely moved the trial court for pre-judgment interest with the motion filed with the trial court on July 10, 2019 (T.d. 178 in 15CV001590). The motion was then denied on October 16, 2019 (T.d. 202 in 15CV001590)

At the time Plaintiff-Appellant had filed for pre-judgment interest, there had been 178 journal entries/filings/itemized entries on the docket, largely due to the incredible volume of filings made by Defendant-Appellee and the higher than usual number of motions to strike that were filed by Plaintiff-Appellant in an attempt to clean up the pleadings and streamline the proceedings. As of the date of this brief being submitted, 2/28/2020, there have been a total of 210 journal entries/filings/itemized entries on the docket, largely due to the excessive volume of repetitive post-judgment motions filed by Defendant-Appellee such as motions for new trials, motions to have Plaintiff [a licensed Ohio attorney] disbarred, motions to shut the court down for "lack of jurisdiction" and motions filed by Defendant-Appellee to sanction attorneys that Plaintiff-Appellant is known to be friends with because they are friends with Plaintiff-Appellant. In short, Defendant-Appellee's conduct significantly bogged down the proceedings, delayed the proceedings, and necessitated an unusually high amount of filings in what could otherwise have been a straight forward case. The cases were filed in September 2015 and May 2016 respectively and did not go to trial until June 2019, with Defendant-Appellee making approximately 70 filings with the trial court.

The trial court convened an evidentiary hearing, oral and appearing, with Plaintiff-Appellant appearing by person and Defendant-Appellee appearing by Skype Internet Video Conference, on October 7, 2019 and entered a judgment entry denying Plaintiff-Appellant's motion for pre-judgment interest on October 16, 2019 on the basis that the Court held that the Defendant-Appellee litigated in good faith and did not delay the proceedings and that the

Defendant-Appellee "reasonably responded to discovery" despite his having not produced written responses to paper discovery and having waited 4 years to move to withdraw admissions with the request being made orally the first day of the jury trial (T.d. 202 in 15CV001590). The trial court also held [in their order denying pre-judgment interest] that Defendant-Appellee never delayed the proceedings by seeking a continuance, which is despite the clear record evidence of the court's own docket (T.d. 92 in 15CV001590) and (T.d. 38 in 15CV001590). Defendant also at various times attempted to join at least third parties to the case so as to bog down the proceedings.

Plaintiff-Appellant timely filed his notices of appeal [one for each consolidated trial court case number] on 10/31/2019 giving rise to the instant appeal. (T.d. 205 in 15CV001590).

STATEMENT OF FACTS

The Defendant-Appellee extensively and horribly libeled and defamed Plaintiff-Appellant in a per se defamatory matter and caused Plaintiff-Appellant to be cast in a false light. Defendant-Appellee stated, among other things, that Plaintiff-Appellant had committed vehicular homicide, perjury, extortion, mail fraud, and wire fraud. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 567 12-17)

Plaintiff-Appellant prevailed on the most significant and substantial of his claims at the conclusion of a jury trial and was awarded $105,400 against Defendant-Appellant (T.d. 172 p.g. 3-5 in 15CV001590)

Defendant-Appellant filed no less than 70 filings in the consolidate cases, many of which were stricken as abusive/scandalous/incomprehensible, some of which were stricken on the basis of unauthorized practice of law, and all of which were rife and replete with abusive and scandalous language which necessitated an abnormally large number of motions to strike, but all of which necessitated some sort of a response, resulting in an excessive number of filings by

Plaintiff-Appellant. For instance, Defendant-Appellee "granted" himself a "notice of default" (T.d. 83 in 15CV001590) and granted himself "letters of marque and reprisal" while also declaring a "crusade" and providing the court a "notice" that he granted himself a "default judgment" (T.d. 14 in 16CV000825). The trial court would ultimately hold that this sort of sovereign citizen pro se lawyering rises to the level of "good faith" litigation and does not unduly delay the proceedings. (T.d. 202 in 15CV001590)

The Defendant-Appellee never responded to Requests for Production of Documents or Interrogatories propounded upon him by Plaintiff-Appellant and ignored the majority of Plaintiff-Appellant's Requests for Admissions, responding incomprehensibly to some of them. Defendant-Appellee let almost 40 months elapse before making an oral motion to withdraw admissions the morning of the first day of the jury trial, a significant and undue delay in the proceedings. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 6-9)

During the litigation of the cases, Plaintiff-Appellant made a settlement/demand offer that Defendant-Appellee pay $100,000.00 [one hundred thousand dollars] to Plaintiff-Appellant and stop defaming him. Defendant-Appellee's counter-offer was to declare that he would murder Plaintiff-Appellant's father and kill Plaintiff-Appellant's cat while also soliciting third parties to murder Plaintiff-Appellant; Plaintiff-Appellant thereafter was granted a Civil Protection Stalking Order against Defendant-Appellee [16CS000102]. (T.d. 207, transcript proceeding Oct 6, 2019, pg 6 at 24-25, pg 7 at 1-4, pg 8 at 6-17). The trial court did not find that Defendant-Appellee failed to negotiate in good faith or failed to make a good faith attempt to resolve the underlying disputes.

LAW AND ARGUMENT

BASIS FOR THE APPEAL

The denial of a post-judgment motion for pre-judgment interest is immediately appealable by right as a final appealable order, as a substantial interest in a special proceeding is affected. *See R.C. 1343.03. See also Moskovitz v. Mt. Sinai Med. Ctr. (1994),* 69 Ohio St.3d 638.

STANDARD OF REVIEW

ABUSE OF DISCRETION as to the determination of lack of good faith.

PLAIN LEGAL ERROR as to the denial of pre-judgment interest.

Moskovitz v.Mt. Sinai Med. Ctr. (1994), 69 Ohio St.3d 638.

"[T]o award prejudgment interest, the court must find that the party required to pay the judgment failed to make a good faith effort to settle and, fourth, the court must find that the party to whom the judgment is to be paid did not fail to make a good faith effort to settle the case. R.C. 1343.03(C). The statute uses the word 'shall.' Therefore, if a party meets the four requirements of the statute, the decision to allow or not allow prejudgment interest is not discretionary. What is discretionary with the trial court is the determination of lack of good faith." Id. at 658.

The trial court abused discretion in failing to find a lack of good faith by Defendant-Appellee and the trial court committed plain legal error in failing to award pre-judgment interest.

FIRST ASSIGNMENT OF ERROR

The trial court committed prejudicial error in failing to find that Defendant-Appellant litigated in bad faith and in failing to find that he unduly delayed the proceedings. (T.d. 202 in 15CV001590)

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court err when it determined that Defendant-Appellee Martin Lindstedt litigated in good faith and did not unduly delay the proceedings?

Defendant-Appellee filed for continuances on two separate occasions (T.d. 92 in 15CV001590) and (T.d. 38 in 15CV001590) and agreed with at least one continuance that was sought by Plaintiff-Appellant (T.d. 109 in 15CV001590). Thus the trial court was wrong to make a finding of fact that the Defendant-Appellee had never requested a continuance and had never delayed the proceedings in such a manner. "None of the requests for continuances were made by Lindstedt" (T.d. 202 in 15CV001590, pg. 2 paragraph 2)

Defendant-Appellant made no less than 70 filings in the consolidated cases, filings with such titles as-

"Defendants'/Counter-Claimants' Counter-Motion to Plaintiff Bryan Reo's Frivolous and malicious motion to strike defendant's answer & counter-claim and for plaintiff to be summarily sanctioned for perjury and fraud in filing Reo's malicious civil complaint and in Reo's motion to strike." (T.d. 26 in 15CV001590).

"Defendant's Fourth or Fifth Response to plaintiff's latest vexatious motion to strike defendant's Second or Third Response to Reo's fifth or sixth motion to strike or whatever it is this week that requires a response to Reo." (T.d.60 in 15CV001590)

"Defendant's pre-trial statement and intention to seek default judgment at jury trial against Bryan Reo and Co-Conspirator Co Counter-Defendants party to plaintiff's fraudulent malicious and frivolous claims." (T.d. 83 in 15CV001590)

"Church of Jesus Christ Christian Aryan Nations of Missouri, Pastor Martin Lindstedt Notice of Default Judgment & Crusade & Letters of Marque and Reprisal." (T.d. 14 in 16CV000825).

Some of the more choice quotes and ramblings from some of Defendant-Appellee's pleadings and filings are as follows.

T.d. 2 in 16CV000825- Defendant-Appellant's original Answer in Mentor Municipal Court "Defendant Lindstedt's Answer"

> Defendant wrote that Plaintiff "successfully blackmailed other mongrels into either leaving the bowel Movement or submitting to Reo's homosexual advances[.]" (Defendant Lindstedt's Answer, pg. 10).
>
> Defendant referred to Plaintiff as a "mamzer faggot[.]" (Defendant Lindstedt's Answer, pg. 10).
>
> Defendant referred to a Plaintiff as a "mongrel homosexual/mamzer faggot[.]" (Defendant Lindstedt's Answer, pg. 10).
>
> Defendant wrote that Plaintiff goes "ass-to-mouth" with Ohio/Michigan attorney Kyle Bristow (Defendant Lindstedt's Answer, pg. 10).
>
> Defendant wrote that Plaintiff's Complaint is on "dishonest flatulence [.]" (Defendant Lindstedt's Answer, pg. 11).
>
> Defendant smeared Plaintiff as a "self-loathing homosexual mongrel without a conscience or remorse[.]" (Defendant Lindstedt's Answer, pg. 12).

> Defendant threatened this Court by stating "Does this Mentor Municipal Court want to destroy itself too[?]" (Defendant Lindstedt's Answer, pg. 12).

In denying the Plaintiff-Appellant's motion for pre-judgment interest, the trial court in the consolidated case that gave rise to the instant appeal appeared to raise issue with the higher than usual number of motions to strike filed by Plaintiff-Appellant. The trial court specifically stated that "Lindstedt reasonably responded to discovery and did not seek to unnecessarily delay the case. While there was considerable motion practice in both cases, Lindstedt did not initiate the lawsuits and his filings were reactive in nature." (T.d. 202 in 15CV001590, pg. 2 paragraph 2)

The only thing Defendant-Appellee was "reacting to" when making a filing wherein he declared a "crusade" and granted himself "letters of marque and reprisal" was the fact that Plaintiff-Appellant sued Defendant-Appellee for defamation per se and was litigating in accordance with the Rules of Civil Procedure.

Defendant-Appellee had numerous pleadings stricken from the record. Defendant's first answer and counter-claim in the 16CV case was stricken, for among other reasons, unauthorized practice of law on behalf of a corporate entity. (T.d. 10 in 16CV000825)

Defendant-Appellee's first two answers and counterclaims in the 15CV case were stricken. (T.d. 50 in 15CV001590)

It should be obvious why Plaintiff-Appellant felt the need to invoke Civil Rule 12(f) on such a regular basis. Defendant-Appellee caused significant and undue delays with his absurd

and abusive filings which by the court's own admission in its motion rulings/orders were rife and replete with abusive language and were generally incomprehensible. Indeed, the court noted in its December 23, 2015 order in the 15CV case, granting the motion to strike Defendant-Appellee's two identical Answer and Counterclaims that "the pleadings under a heading "PARTIES" references no fewer than twenty-three "parties" that defendant Lindstedt may be joining pursuant to Civ.R. 13(H). Whether that is the case is also unclear. Instructions for service were only provided to the clerk of court for six parties." As well as "Here the pleadings make frequent references to one or more conspiracies without clearly stating what is at issue, who was involved and when. Whether this is the only claim is also not made clear. The fact that plaintiff Reo sought clarification by filing a motion for definite statement underscores this point." (T.d. 50 in 15CV001590 at pg. 1-2)

Delay caused by the need to respond to Defendant-Appellee's bad faith filings such as his answers, counter-claims, and his "Response to Plaintiff's Motion to Strike" ("Defendant's Response to Plaintiff's Motion to Strike") (T.d. 55 in 15CV001590) which necessitated a motion to strike being filed by Plaintiff-Appellant (T.d. 56 in 15CV001590) due to the flagrantly abusive nature of Defendant-Appellee's filing.

> Defendant wrote that "the federal judiciary needs to shut this Lake County Court of Common Pleas down." (T.d. 55 in 15CV001590, Defendant's Response to Plaintiff's Motion to Strike pg. 2).
>
> Defendant wrote about "race traitors and Jews." (T.d. 55 in 15CV001590, Defendant's Response to Plaintiff's Motion to Strike pg. 3).

Defendant accused the trial court of "ovulating whenever with Bryan Reo in the same room." (T.d. 55 in 15CV001590, Defendant's Response to Plaintiff's Motion to Strike pg. 4).

Defendant falsely and scandalously wrote that "Bryan Reo threatens to use his constantly implied "special relationship" with this Court in general and Magistrate Roll in particular as a club against the interests of Pastor Lindstedt." (T.d. 55 in 15CV001590, Defendant's Response to Plaintiff's Motion to Strike pg. 8). This from a Defendant-Appellee who at various times wrote in his pleadings that Plaintiff-Appellant was involved in a homosexual relationship with the Magistrate and the Common Pleas Judge [such remarks would obviously necessitate motions to strike under Civ.R. 12(f)].

Pleadings and filings were not the only areas where Defendant-Appellee engaged in bad faith and undue delay, he also completely failed to cooperate with discovery in any meaningful context.

The Defendant-Appellee never responded to Requests for Production of Documents or Interrogatories propounded upon him by Plaintiff-Appellant and ignored the majority of Plaintiff-Appellant's Requests for Admissions, responding incomprehensibly to some of them. Defendant-Appellee let almost 40 months elapse before making an oral motion to withdraw admissions the morning of the first day of the jury trial, a significant and undue delay in the proceedings. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 6-9).

Defendant-Appellee openly stated that he did not respond in any manner to more than half of Plaintiff-Appellant's Requests for Admissions because he thought that they had a limit of 25 along the lines of Interrogatories [he also did not respond to Interrogatories and did not respond to Requests for Production of Documents] and he openly stated that his responses to the Requests for Admissions were to simply take the questions and reverse them and ask those questions of Plaintiff-Appellant. Defendant stopped even that at Request #44 and did not respond to Requests #45 through Request #90. The Requests for Admissions, along with other written discovery, were propounded upon Defendant-Appellee on 11/15/2015 and Defendant-Appellee waited until 6/24/2019 to make an oral motion to withdraw those admissions the morning of the first day of the jury trial. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 6-9).

The conclusion of the trial court that Defendant-Appellee "reasonably responded" to discovery, is clearly an erroneous finding and that conclusion must necessarily be seen as an abuse of discretion.

Kalain v Smith, 25 Ohio St.3d 157, 159, 495 N.E.2d 572 (1986) and *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638 provide the most significant precedential authority for the granting of pre-judgment interest in Ohio.

The four factors were set forth in Kalain:

"A party has not 'failed to make a good faith effort to settle' under R.C. 1343.03(C) if he has (1) fully cooperated in discovery proceedings, (2) rationally evaluated his risks and potential liability, (3) not attempted to unnecessarily delay any of the proceedings, and (4) made a good faith monetary settlement offer or responded in good faith to an offer from the other party." Kalain at 159.

When it comes to the delay of proceedings, dilatory behavior of a party is not adequate grounds for being granted leave to withdraw admissions and permitting a party to withdraw admissions after the other party has relied upon the admissions to move for summary judgment would unfairly prejudice the moving party. See *Cleveland Trust. Co v. Willis,* 20 Ohio St.3d 66, 485 N.E.2d 1052 (1985). Defendant-Appellee should not only not have been allowed to withdraw the admissions the morning of trial, he should not have been allowed to withdraw them period.

By no stretch of the imagination could Defendant-Appellee be said to have "cooperated fully" in the discovery proceedings, given that he did not respond in any capacity to Interrogatories nor to Requests for Production, he did not respond to 46 of the 90 Requests for Admissions, and he waited until the morning of trial to make an oral motion to withdraw admissions. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 6-9)

Defendant-Appellee did not rationally evaluate his risks and potential liability and even though the trial court noted that Defendant-Appellee believed he had a First Amendment right to defame Plaintiff-Appellant in a per se manner, this is legally insufficient and does not constitute a rational evaluation of risks and liability.

A defendant's purported belief in the defamatory statement is not a legally sufficient defense to a claim of defamation or libel per se. See *Gray v. Allison Division, General Motors Corp.*, 52 Ohio App.2d 348, 370 N.E.2d 747 (8th App. Dist. 1977) where the court held, "Asserted belief of defendant in defamation action in truth of allegedly defamatory charge is no defense."

Defendant-Appellee readily admitted that at no time did he ever make a monetary offer of any sort to Plaintiff-Appellant. Plaintiff-Appellant demanded $100,000.00 [one hundred thousand dollars] and ultimately received a jury award of $105,400.00 [one hundred and five thousand and four hundred dollars]. (T.d. 207, transcript proceeding Oct 6, 2019, pg 15)

> "[T]o award prejudgment interest, the court must find that the party required to pay the judgment failed to make a good faith effort to settle and, fourth, the court must find that the party to whom the judgment is to be paid did not fail to make a good faith effort to settle the case. R.C. 1343.03(C). The statute uses the word 'shall.' Therefore, if a party meets the four requirements of the statute, the decision to allow or not allow prejudgment interest is not discretionary. What is discretionary with the trial court is the determination of lack of good faith." *Moskovitz* at 658.

The instant appeal is based on the simple fact that Plaintiff-Appellant offered to let the Defendant-Appellee settle the case for $100,000.00 and ultimately recovered $105,400.00 at trial [after nearly 4 years of litigation] while Defendant-Appellee admitted that he never offered any money to Plaintiff-Appellant and given that he obviously delayed and hindered the proceedings as evidenced by the docket and the transcripts of the trial and the motion hearings.

The trial court clearly erred in failing to find bad faith on the part of Defendant-Appellee and in failing to find that unduly delayed the proceedings, failed to cooperate with discovery, and failed to make a good faith effort to settle the case. The determination that Defendant-Appellee litigated in good faith and did not unduly delay the proceedings was not only unsupported by the record evidence, it was directly contradictory to the record evidence.

SECOND ASSIGNMENT OF ERROR

The trial court committed prejudicial error in making findings of fact that were contrary to the record evidence of the court's own docket and the transcripts of the evidentiary hearings. (T.d. 202 in 15CV001590)

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court err when it found that Defendant-Appellee Lindstedt did not request any continuances when the court's own docket reveals that the Defendant-Appellee filed for at least two continuances and agreed with Plaintiff-Appellant's counsel who filed for one continuance.

The trial court made numerous errors in regards to fact finding when denying Plaintiff-Appellant's motion for pre-judgment interest. (T.d. 202 in 15CV001590)

Specifically, the trial court found that "None of the requests for continuances were made by Lindstedt" (T.d. 202 in 15CV001590, pg. 2 paragraph 2)

Defendant-Appellee filed for continuances on two separate occasions (T.d. 92 in 15CV001590) and (T.d. 38 in 15CV001590) and agreed with at least one continuance that was sought by Plaintiff-Appellant (T.d. 109 in 15CV001590). Thus, the trial court was wrong to make a finding of fact that the Defendant-Appellee had never requested a continuance and had never delayed the proceedings in such a manner.

The finding that a party did not unduly delay the proceedings would be a factor in determining whether to grant pre-judgment interest. *Kalain v Smith,* 25 Ohio St.3d 157, 159, 495 N.E.2d 572 (1986). As such, the trial court making the erroneous finding that the Defendant-Appellee did not delay the proceedings, specifically that he never requested a continuance, when the trial court's own docket clearly demonstrates that he requested two continuances outright and agreed with Plaintiff-Appellant's then counsel's request for one continuance, would tend to lead to the trial court making an erroneous conclusion of law that Plaintiff-Appellant was not entitled to pre-judgment interest when Plaintiff-Appellant was rightly entitled to the same.

The trial court also stated that "Both cases arose after Reo and Lindstedt engaged in highly disparaging comments about each other on various internet sites." (T.d. 202 in 15CV001590, pg. 1 paragraph 2) but there is no record evidence to support the notion that the defamation was some sort of mutual two-way street, indeed the jury found for Plaintiff-Appellant in regards to Defendant-Appellee's counter-claim for defamation. (T.d. 172 p.g. 11 in 15CV001590). An erroneous finding that the defamation was mutual or a two-way street might have influenced the trial court in its ultimately erroneous denial of pre-judgment interest or in its abuse of discretion which was exercised in favor of Defendant-Appellee as to the motion for pre-judgment interest.

A cursory glance of the docket from either the 16CV or 15CV case reveals a veritable barrage of filings by Defendant-Appellee, all with fairly unusual titles, which were all filled with even more unusual and bizarre statements, which demonstrate an undue delay of the proceedings. The trial court noted that there was "considerable motion practice in both cases" (T.d. 202 in 15CV001590, pg. 2 paragraph 2). However, the trial court failed to note or consider

that Plaintiff-Appellant never filed anything that was stricken from the record, never filed anything that was procedurally improper, and never filed anything that contained vulgarity or abusive language, while at least five of Defendant-Appellee's filings were stricken from the record, including his out of rule motion for summary judgment filed without leave, his initial two answers in the 15CV case, his initial answer in the 16CV case, and several other filings. In short, while there may have been significant motion practice, a significant number of Plaintiff-Appellant's motions were granted, specifically regarding motions to strike the filings of Defendant-Appellee. Other than a motion to consolidate the two cases and two motions for continuances, none of Defendant-Appellee's motions were granted and a significant number of his filings were stricken by motion of Plaintiff-Appellant or sua sponte by the trial court.

At one instance Defendant-Appellee "granted" himself a "notice of default" (T.d. 83 in 15CV001590) and granted himself "letters of marque and reprisal" while also declaring a "crusade" and providing the court a "notice" that he granted himself a "default judgment" (T.d. 14 in 16CV000825). The trial court would ultimately make a finding that such filings did not unduly delay the proceedings (T.d. 202 in 15CV001590). The finding that the Defendant-Appellee's filings did not constitute undue delay, was a finding made without any support in the record evidence and was actually contrary to all available record evidence, such as a basic glance at the trial court's own docket of the case. The trial court provided no rationale for finding that "letters of marque and reprisal" "crusades" and self-granted "default judgment by notice" were not undue delays of the proceedings. No rationale was provided because the finding was arbitrary, unreasonable, and unconscionable and thus constituted an abuse of discretion. The Supreme Court has frequently held that an abuse of discretion occurs when a decision is

unreasonable, arbitrary, or unconscionable, see, e.g., *State ex rel. Worrell v. Ohio Police & Fire Pension Fund*, 112 Ohio St.3d 116, 2006-Ohio-6513, 858 N.E.2d 380.

THIRD ASSIGNMENT OF ERROR

The trial court committed prejudicial error in concluding that a defamation defendant's mistake of law as to Firth Amendment privilege and as to his purported belief in the truth of his own defamatory statements served to provide a sufficient good faith basis for mounting a legally insufficient defense. (T.d. 202 in 15CV001590)

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court err when it found that Defendant-Appellee's had a rational basis for not settling given Defendant-Appellee's mistaken belief that the First Amendment protected statements which were clearly defamatory per se. Is a Defendant's mistake of law or his purported belief in the truth of his defamatory statements sufficient as a defense to an accusation of defamation per se?

The Defendant-Appellee defamed Plaintiff-Appellant in a manner that was per se defamatory and caused Plaintiff-Appellant to be cast in a false light. Defendant-Appellee stated, among other things, that Plaintiff-Appellant had committed vehicular homicide, perjury, extortion, mail fraud, and wire fraud. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 567 12-17). The defamation was extensive, substantial, and significant.

Defendant's purported belief in the defamatory statement is not a legally sufficient defense to a claim of defamation or libel per se. See *Gray v. Allison Division, General Motors Corp.*, 52 Ohio App.2d 348, 370 N.E.2d 747 (8th App. Dist. 1977) where the court held, "Asserted belief of defendant in defamation action in truth of allegedly defamatory charge is no defense."

Once again turning to Kalain:

> "A party has not 'failed to make a good faith effort to settle' under R.C. 1343.03(C) if he has (1) fully cooperated in discovery proceedings, (2) rationally evaluated his risks and potential liability, (3) not attempted to unnecessarily delay any of the proceedings, and (4) made a good faith monetary settlement offer or responded in good faith to an offer from the other party." Kalain at 159.

Given that Defendant-Appellee never rationally evaluated his risks and potential liability, because of his legally insufficient belief in a First Amendment privilege to commit libel per se, Defendant-Appellee did not satisfy the second factor in Kalain for not having pre-judgment interest assessed against him. A purportedly sincere belief in sovereign citizen pseudo-legal theories and arguments is not a rational evaluation of risks and potential liability. To any objectively reasonable individual it would have been clear that risks and liability existed based on the nature of the defamatory statements made against Plaintiff-Appellant, which were of a per se nature.

At common law, once plaintiff proved that material was defamatory per se, he was entitled to recover presumed damages, as proof of defamation itself established existence of some damages. *Gosden v Louis*, 116 Ohio App.3d 195, 687 N.E.2d 481 (9th App. Dist, 1996)

The common law standard is clear and is consistent in many jurisdictions. Defendant-Appellee, had he operated as an objectively reasonable man, would have properly evaluated his risks and potential liability and understood that allegations of criminal conduct, unprofessional conduct, and conduct that was immoral or of a nature of moral turpitude, would have exposed him to significant risk of losing on claims for defamation per se, with potentially substantial liability exposure. Defendant-Appellee's mistakes of law, failure to properly appreciate or analyze/assess the risks and potential liability, need not have been in good faith or bad faith, the failure to rationally evaluate is sufficient.

FOURTH ASSIGNMENT OF ERROR

The trial court erred in finding that Plaintiff-Appellant's settlement offers were unreasonable by combining all of the settlement offers into one substantial demand instead of analyzing each separate offer on its own, with any one offer on its own being objectively and subjectively reasonable. (T.d. 202 in 15CV001590)

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court err when it took all of the different and various settlement demands/offers Plaintiff-Appellant made to Defendant-Appellee to try to resolve the case at various times, combined them into one demand/offer, and then implicitly found that the colossal demand [one never made by Plaintiff-Appellant] was unreasonable.

Plaintiff-Appellant demanded/offered a settlement on the terms of payment of $100,000.00 [one hundred thousand dollars] to Plaintiff-Appellant, removal of defamatory content under control of Defendant-Appellee, and no further libel/defamation of Plaintiff-

Appellant by Defendant-Appellee. At various times Plaintiff-Appellant also offered to settle for "no money" if Defendant-Appellee would remove the defamatory content, agree to no further defamation, and seek professional psychological or psychiatric help and surrender his firearms to the authorities, but the demand for money did not include the demand for submission to psychiatric help or the surrendering of firearms to the authorities. Plaintiff-Appellant also offered at one time to settle for no money if Defendant-Appellee conveyed his rental property/real estate to Plaintiff-Appellant and cleaned up his act and got a job. (T.d. 207, transcript proceeding Oct 6, 2019, pg 6 at 8-22, pg 7 at 14-25, pg 8 at 6-17)

Defendant-Appellee admitted that at no time did he ever offer money to settle the case. (T.d. 207, transcript proceeding Oct 6, 2019, pg 15)

The trial court made a finding contrary to the record evidence, that Plaintiff-Appellant's settlement demand was comprehensive and included every separate distinct demand, rolled into one colossal demand.

The court's order denying pre-judgment interest "During the hearing Reo testified that he offered to settle for "$100,000 in damages from Lindstedt along with Lindstedt agreeing to turn over all firearms he may have, attend psychological counseling, remove all material on the internet and abstain from using the internet in the future." (T.d. 202 in 15CV001590 pg 2 at paragraph 2) however the transcripts of the hearing reveal no such testimony. The court's order uses the word "and" in the conjunctive, along with commas, and a list that appears to be exhaustive. What should have been used was the disjunctive "or" and separate offers. Any one of Plaintiff-Appellant's separate offers/demands was objectively and subjectively reasonable, 1) pay $100,000 and stop defaming me, 2) pay nothing, stop defaming me, get professional help and surrender your firearms to the police, 3) pay nothing, deed your rental land over to me, and

stop defaming me; but the trial court made a finding in their order that entailed the aggregation of all of Plaintiff-Appellant's settlement demands, any one of which would have been reasonable on its own, into one large significant demand that would have been intrusive and clearly unreasonable and included "abstain from using the internet in the future" where Plaintiff-Appellant never demanded that and only demanded "stop defaming me on the internet in the future." (T.d. 207, transcript proceeding Oct 6, 2019, pg 6 at 8-22, pg 7 at 14-25, pg 8 at 6-17)

FIFTH ASSIGNMENT OF ERROR

The trial court committed prejudicial error in failing to award pre-judgment interest to Plaintiff-Appellant in light of Defendant-Appellee's obvious bad faith, undue delay, non-cooperation with discovery, and his failure to attempt to settle in good faith. (T.d. 202 in 15CV001590)

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court err when it failed to award pre-judgment interest to Plaintiff-Appellant?

In *Lopez v. Dorkoff,* 170 Ohio App.3d 241, 2007-Ohio-642 (2007) the court detailed:

> Our standard of reviewing the trial court's decision is abuse of discretion. See *Landis v. Grange Mut. Ins. Co.* (1998), 82 Ohio St.3d 339, 695 N.E.2d 1140. The Supreme Court has frequently held that an abuse of discretion occurs when a decision is unreasonable, arbitrary, or unconscionable, see, e.g., *State ex rel. Worrell v. Ohio Police & Fire Pension Fund*, 112 Ohio St.3d 116, 2006-Ohio-6513, 858 N.E.2d 380.

From the record evidence, including but not limited to the Defendant-Appellee's pleadings, filings, exhibits, and the transcripts of the trial testimony and the testimony offered at the hearing on the motion for pre-judgment interest, it is abundantly clear that the trial court made a decision that was unreasonable, arbitrary, or unconscionable, and was not only not supported by record evidence, but was directly contrary to the record evidence. The finding that the Defendant-Appellee litigated in good faith was contrary to all available evidence, it was an unreasonable finding, an arbitrary finding, and an unconscionable finding. The denial of a pre-judgment interest award to the Plaintiff-Appellant was abuse of discretion.

Unless 70+ filings in a sovereign citizen manner by an abusive, harassing, and vexatious litigant [Defendant-Appellee] who grants himself letters of marque and reprisal (T.d. 14 in 16CV000825) is good faith litigation, and unless offering no money in light of the extreme defamation committed, indeed threatening to kill members of Plaintiff-Appellant's family and soliciting Plaintiff-Appellant's murder is a "reasonable attempt to settle the case" (T.d. 207, transcript proceeding Oct 6, 2019, pg 6 at 24-25, pg 7 at 1-4, pg 8 at 6-17), then the trial court made findings, conclusions, and an ultimate ruling [denying pre-judgment interest] that was arbitrary, unreasonable, or unconscionable, if not indeed all three.

CONCLUSION

By no reasonable definition of the term could Defendant-Appellee have been said to have litigated in "good faith." Defendant-Appellee made no reasonable attempt to resolve the disputes/claims, he did not litigate in good faith, he unduly delayed the proceedings, and his poor understanding of First Amendment jurisprudence justifies neither the position he adopted in the litigation nor his behavior and conduct throughout the litigation.

The order of the trial court denying Plaintiff-Appellant's post-judgment motion for pre-judgment interest should be reversed and the matter remanded to the trial court with an order to enter an appropriate award of pre-judgment interest in favor of Plaintiff-Appellant in the amount of $18,521.24 dollars per the statutory rates during the relevant time period.

RESPECTFULLY SUBMITTED,

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Certificate of Service

I, Bryan Anthony Reo, do hereby certify that a true and genuine copy of the foregoing document has been dispatched by United States regular mail, postage prepaid to the Appellee at:

Martin Lindstedt
338 Rabbit Track Road
Granby, Missouri 64844

On this 28 day of Feb. 2020

X Bryan Reo