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

BRYAN ANTHONY REO	:	**Case #- 2019-L-073** **Case #- 2019-L-074**
Appellee/Plaintiff,	:	
vs.	:	
MARTIN LINDSTEDT et al.	:	**BRIEF OF APPELLEE BRYAN ANTHONY REO**
Appellant/Defendant	:	
	:	
	:	

BRIEF OF APPELLEE
BRYAN ANTHONY REO

ORAL ARGUMENT REQUESTED

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Defendant-Appellant's Fourth Assignment of Error is about exclusion of evidence and is entirely duplicative of the Third Assignment of Error and Plaintiff-Appellee relies on the same authorities, logic, reasoning, rationale, and record citations for the Fourth Assignment as for the Third. Defendant cites no authorities and does not properly or meaningfully cite to the record. There is nothing new or unique to add.

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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-Appellee 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-Appellee's favor. A directed verdict was granted in favor of Plaintiff-Appellee as to 9 of Defendant-Appellant's 10 counterclaims, and the jury found in Plaintiff-Appellee's favor as to the sole remaining counterclaim of Defendant-Appellant. Tellingly, the trial court, when granting Plaintiff-Appellee's motion for a directed verdict, found that some of Defendant-Appellant'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-Appellee in the amount of $105,400.00 [one hundred and five thousand and four hundred dollars] against Defendant-Appellant.

Defendant-Appellant filed a motion for a directed verdict on 6/25/2019 (T.d. 166 in 15CV001590), which was denied on 7/1/2019. (T.d. 171 in 15CV001590)

Defendant-Appellant filed a motion for a mistrial on 6/26/2019 (T.d. 167 in 15CV001590), which was denied on 7/1/2019. (T.d. 172 in 15CV001590)

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

A final appealable order was entered on 7/1/2029. (T.d. 174 in 15CV001590)

A notice of final appealable order was issued on 7/2/2010. (T.d. 175 in 15CV001590)

Defendant-Appellant filed a motion to alter the judgment on 7/26/2019, not invoking any of the Civil Rules as a basis for the alteration he sought. (T.d. 181 in 15CV001590)

Defendant-Appellant filed a motion to set aside the judgment on 7/29/2019 under Civ.R. 59(B). (T.d. 182 in 15CV001590)

Defendant-Appellant filed his first Notice of Appeal on 7/30/2019. (T.d. 183 in 15CV001590)

Plaintiff-Appellee 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).

Defendant-Appellant's post-judgment motions for relief from judgment, for new trial, or to vacate/alter the judgment were denied in various rulings-

On 9/25/2019 the denial of Defendant-Appellant's motion for new trial. (T.d. 194 in 15CV001590)

On 10/15/2019 the denial of Defendant-Appellant's motion to set aside jury verdict or for new trial. (T.d. 200 in 15CV001590)

The instant appeal followed.

STATEMENT OF FACTS

The Defendant-Appellant extensively and horribly libeled and defamed Plaintiff-Appellee in a per se defamatory matter and caused Plaintiff-Appellee to be cast in a false light. Defendant-Appellant stated, among other things, that Plaintiff-Appellee 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)

Appellee suffered damages in relation to Appellant's misconduct. (T.d. 3 Plaintiff's Complaint, ¶ 14 in 15CV001590).

The Trial Court restricted Plaintiff-Appellee to only pursuing [and only being allowed to evidence of] claims/causes of action for defamation that happened within one year prior to the commencement of the case in the Lake County Courts. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 118 at 25, pg 119 at 1-9) which limited Plaintiff-Appellee to evidence of defamation that had occurred on or after 9/18/2014 which was one year prior to the date of the filing of the Complaint 15CV001590 (T.d. 2 in 15CV001590) or which had occurred on or after 3/22/2016 which was one year prior to the date of the filing of the Complaint in 16CV000825 which was filed on 3/22/2016 in Mentor Municipal before being transferred to Lake County Court of Common Pleas.

In short, Plaintiff was permitted to present a case for libelous/defamatory statements or any actionable statements that occurred on or after 9/18/2014. Plaintiff presented his proofs for defamatory statements which occurred between 9/18/2014 and 3/22/2016. Many of Plaintiff-Appellee's claims for defamation and false light were largely based on statements made in January of 2015 none of which were time-barred (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 142 at 5-18). The statements occurred between the period of 9/18/2014 to 3/22/2016 as

provided by the court's application of the statute of limitations from the filing of the 15CV case and the 16CV case.

Plaintiff-Appellee 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 a largely incomprehensible appeal that raises Sovereign Citizen arguments and which honestly is violative of the Appellee's right to due process because Appellee is essentially compelled to respond to incoherent assignments of error and to almost construct Appellant's arguments for him and then argue against Appellee's perception as to what Appellant's arguments are because it simply is not clear what if any of Appellant's arguments actually are. As best as Appellee can discern, Appellant raises issues with personal jurisdiction, jury selection, jury instructions, statutes of limitation, denial/admissibility of evidence, among others. None of Appellant's Assignments of Error have any merit, his revised brief violates two orders issued by this court prohibiting unauthorized practice of law and abusive language, and his assignments of error are in non-compliance with the rules for pleading standards to the extent that Appellant does not use his assignment of error to succinctly and concisely summarize the issue for review.

LAW AND ARGUMENT

BASIS FOR THE APPEAL

Bryan Anthony Reo ("Appellee") maintains that no reversible error was committed by the Trial Court however Appellant is fundamentally appealing the denial of a motion for a new trial. Appellee would also contend that Appellant's appeal is fatally defective to the extent it provides no basis for the appeal. Appellant raises other assignments of error such as "negro woman on the jury" which is as meritless as it is offensive. Appellant also raises the issue of personal jurisdiction which must be seen as patently frivolous in light of the fact that Appellant filed an Answer containing a Counter-Claim (T.d. 52 in 15CV001590) and then pursued the Counter-Claim at trial (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 17 at 18-22) and thus voluntarily assented to the jurisdiction of the Lake County Court of Common Pleas, in addition to having knowingly directed his original tortious conduct into Ohio (T.d. 1 in 15CV001590 Appellee/Plaintiff's Complaint)

STANDARD OF REVIEW

The denial, or granting, of a motion for a new trial, is reviewed on an abuse of discretion with the note that the trial court would have to find that, among other things, the jury verdict went against the greater weight of the evidence, in order to grant a motion for a new trial. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179

However, the Ohio Constitution provides that: "No judgment resulting from a trial by jury shall be reversed on the weight of the evidence except by the concurrence of all three judges hearing the cause." Ohio Constitution, Article IV, Section 3(B)(3).

Aside from the obvious issues of Appellant now violating the repeated orders of this Court in regards to abusive language, unauthorized practice of law on behalf of a corporate entity, and improper method/manner of citations [defective citations that do not include proper volume or page references, let alone line/paragraph references], Appellee would further contend that Appellant's appeal is fatally defective to the extent it does not articulate the standard of review to be used by the Court.

STATEMENT OF ISSUES PRESENTED FOR REVIEW[1]

1. Whether the Trial Court enjoyed personal jurisdiction over Appellant.

2. Whether the Trial Court was correct to prevent Appellant from using peremptory challenges during voir dire to discriminate against a prospective juror based upon said juror's race.

3. Whether the Trial Court was correct to prevent Appellant from using exhibits at trial which Appellant failed to timely provide to Appellee.

4. Whether the Trial Court was correct to prevent Appellant from offering proofs at trial which Appellant failed to timely provide to Appellee.

5. Whether the Trial Court correctly applied the ruling of *New York Times v. Sullivan*, 376 U.S. 254 (1964), and *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

6. Whether the Trial Court failed to appropriately impose sanctions due to the arguments made during Appellee's closing statement.

7. Whether the Trial Court failed to take into consideration the application statute of limitations for Appellee's tort claims.

8. Whether the Trial Court's jury instructions were erroneous.

9. Whether the Trial Court erred by refusing to permit a non-licensed lawyer to represent a party to the civil action.

[1] Appellee's Statement of Issues Presented correlates to the Assignments of Error presented by Martin Lindstedt ("Appellant") in Appellant's Brief, but Appellee is setting forth the same in a concise manner and without the superfluous—and offensive—language which is contained within Appellant's Brief.

FIRST ASSIGNMENT OF ERROR

Whether or not the trial court erred by determining it enjoyed personal jurisdiction over Defendant-Appellant.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Did the trial court enjoy personal jurisdiction over the Defendant-Appellant?

Defendant-Appellant undertook a campaign of extensive and horrendous defamation directed against Plaintiff-Appellee, who was in Ohio, with Defendant-Appellant knowing at all relevant times that he was directing his conduct into Ohio so as to damage a citizen of Ohio. (T.d. 1 in 15CV001590 Appellee/Plaintiff's Complaint)

The long-arm statute operates to permit an Ohio court to enjoy personal jurisdiction over Defendant-Appellant under the circumstances of his defamation against Plaintiff-Appellee. *Kauffman Racing Equip., L.L.C., v. Roberts*, 126 Ohio St.3d 81, (Ohio 2010) (holding that a non-commercial website intentionally used to defame an Ohio resident provides Ohio courts personal jurisdiction over foreign tortfeasor).

Additionally, it is well-established that a party that would not otherwise be subject to the personal jurisdiction of a court is subjected to that jurisdiction when the party files an answer which also contains a counter-claim, regardless of whether or not the party has raised personal jurisdiction as an affirmative defense. By electing to proceed with a counter-claim in a particular

court, a non-resident necessarily voluntarily assents to the court enjoying personal jurisdiction over the individual pursuing the counter-claim.

See *Clow Water Systems Co., a Division of Mcwane, Inc. v. Guiliani Associates, Inc.,* 99-LW-3417, 99-CA-008 where the court held:

> Appellant also urges Ohio's long-arm statute, R.C. 2307.382, and Civ. R. 4.3 confer jurisdiction over appellee because appellee transacted business within the State of Ohio. Appellant concedes appellee does not maintain a physical presence in Ohio, and did not travel to Ohio to conduct its business with appellant. Nevertheless, appellee negotiated a contract to purchase goods shipped from Ohio to another state. Appellant argues this is sufficient under Ohio's civil rules and long-arm statute to confer jurisdiction over a non-resident corporation, see *Hammill Manufacturing Company v. Quality Rubber Products, Inc*. (1992), 82 Ohio App. 3d 369; *Columbus Show Case Company v. CEE Contracting, Inc*. (1992), 75 Ohio App. 3d 559. Thirdly, appellant argues contrary to the court's finding, appellee waived its right to assert the defense of lack of personal jurisdiction in filing an answer and a counter-claim against appellant in the Ohio action. **Active litigation of the action constitutes a waiver of the defense of lack of personal jurisdiction**, see *McBride v. Coble Express, Inc*. (1993), 92 Ohio App. 3d 505. **Although appellee timely raised the issue of personal jurisdiction, it then filed a answer and counterclaim, waiving the defense**. We have reviewed the record, and we find appellant is correct on all points. Our de novo review of the documentation attached to the amended complaint demonstrates a contract between the parties, which contains a forum selection clause, and also demonstrates a transaction of business in Ohio sufficient to constitute submission to personal jurisdiction in an Ohio court, under the Civil Rules and the long-arm statute. **Further, appellee submitted to the jurisdiction of the court when it availed itself of the court's process in filing its answer and counterclaim**. We conclude the trial court erred in finding it lacked jurisdiction over this matter. The assignment of error is sustained.

The trial court enjoyed personal jurisdiction over Defendant-Appellant by virtue of long-arm jurisdiction per **R.C. § 2307.382(A)(6)** and by virtue of the Defendant-Appellant voluntarily assenting to the trial court exercising personal jurisdiction over him because he elected to file an answer containing a counter-claim and thus waived any defenses as to personal jurisdiction.

There was an Answer containing a Counter-Claim (T.d. 52 in 15CV001590) and then Defendant-Appellant pursued the Counter-Claim at trial (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 17 at 18-22) after fully participating in the litigation.

The trial court did not err but rather correctly proceeded with the case based on the clear enjoyment of personal jurisdiction over both of the parties.

SECOND ASSIGNMENT OF ERROR

Whether or not the trial court erred during voir dire when it prohibited Defendant-Appellant from using a peremptory challenge against the only African-American in the jury pool, where Defendant-Appellant stated his only reason for seeking to use the peremptory challenge was racial in nature.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. A party may not use a peremptory challenge for a racial motive.

Edmonson v. Leesville Concrete Company, 500 U.S. 614 (1991) clearly provides that a peremptory challenge may not be used on the basis of race in a civil trial because it violates due process.

Defendant-Appellant sought to challenge for cause the only African-American woman [indeed the only African-America] in the entire jury pool. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 75 at 23-25, pg 76 at 1-13)

Defendant-Appellant stated, "I want to, I want to, to, essentially because she's black, I don't want her." (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 76 at 6-8)

Plaintiff-Appellee opposed the attempt to make that challenge for cause. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 76 at 11-13)

The trial court [correctly] denied Defendant-Appellant's attempt to challenge for cause the only African-American woman on the jury. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 76 at 2-5)

The Defendant-Appellant then attempted to make a peremptory challenge of the only African-American woman on the jury. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 82 at 2)

The Plaintiff-Appellee opposed the attempt for a peremptory challenge to be used in that manner. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 76 at 11-13 and pg 82 at 9-11)

The trial court [correctly] denied Defendant-Appellant's attempt to use a peremptory challenge to remove the only African-American woman from the jury, particularly in light of Defendant-Appellant openly stating that his only motive in wanting the juror removed was her race. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 82 at 20-25 and pg 83 at 1-6)

After being denied the opportunity to use racial animus as a basis for his challenge, Defendant-Appellant claimed the juror was unemployed and lived on the "white man's welfare meal ticket." The trial court saw through this and rejected it after correctly pointing out that Defendant-Appellant did not ask her any questions about her employment and that her jury questionnaire form showed her to be employed as a medical professional with the Cleveland Clinic. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 82 at 20-25 and pg 83 at 1-6) (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 448 at 4-10)

Defendant-Appellant's assignment of error in this regard, and his proposition that he has some right to remove a juror from a jury pool, whether for cause, or via a peremptory challenge, because of a motive of hostility and animus to their race, is absurd and the Defendant-Appellant tellingly cites no case precedent or statutory authority in support of his outrageous position, a position so outrageous it merits no further discussion excepting to state that Defendant-Appellant does not appear to understand *Batson v. Kentucky,* 476 U.S. 79 (1986) [he cites it but doesn't use it] and he does not appear to even attempt to address *Edmonson v. Leesville Concrete Company* which is controlling authority on the matter.

THIRD ASSIGNMENT OF ERROR

Whether or not the trial court erred by deeming evidence as inadmissible where Defendant-Appellant never meaningfully participated in discovery, never produced his desired exhibits in discovery, failed to comply with the standing pre-trial order to exchange exhibits with Plaintiff-Appellee and where Defendant-Appellant was 29 minutes late for the in-camera review session that the trial court scheduled during the trial.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Exclusion of evidence is the appropriate remedy [or sanction] for a party's failure to comply with a standing-order to exchange exhibits intended to be offered as evidence, prior to the trial, and is also an appropriate sanction when a party fails to attend a scheduled in-camera review scheduled by the trial court to review the exhibits desired to be offered into evidence.

The Defendant-Appellant, by his own admission, did not answer interrogatories nor produce documents any documents in response to Plaintiff-Appellee's discovery requests, and he failed to respond to about half of the Requests for Admissions and waited approximately 3 years, until the first day of trial, to make an oral motion to withdraw admissions. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 4 – pg 11)

The trial court allowed Defendant-Appellant to withdraw all of his party/judicial admissions that had been made per Civ.R. 36 on the first day of the trial. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 11 at 5-16)

During the Case Management Conference conducted on December 17, 2015, Magistrate Judge Roll informed Defendant-Appellant that the Requests for Admissions were self-effectuating and would be admitted unless they were addressed by the deadline that the Court was setting, with that deadline being January 6, 2016. Magistrate Judge Roll also instructed Defendant-Appellant to read, learn, and obey the Local Rules. Defendant-Appellant did nothing and waited until June 24, 2019 to make an oral motion to withdraw the admissions. 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*, 485 N.E.2d 1052 (1985)

Even still, Defendant-Appellant was allowed to withdraw his admissions more than three years after the admissions were admitted on the self-effectuating basis of Civ.R. 36. The trial court gave Defendant-Appellant tremendous consideration and latitude in allowing Defendant-Appellant the privilege of having his admissions withdrawn on June 24, 2019 after Defendant-Appellant's failure to respond by the deadline of January 6, 2016.

The Defendant-Appellant had never complied with the pre-trial order and did not provide any exhibits at all to Plaintiff-Appellant and wanted to offer exhibits that would have resulted in extreme surprise and prejudice to the Plaintiff-Appellee. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 222 at 6-11)

The Defendant-Appellant failed to appear for an in-camera review hearing that the trial court declared would be held at 8:00 am on 6/25/2019 prior to the jury coming in. Defendant-Appellant was told that the court would conduct a review of some documents and other evidence that the Defendant-Appellant wished to offer into evidence. Defendant-Appellant came in the court room at 8:20 am and took nine minutes to unpack his stuff, which used up the entire 30 minutes that the trial court had allocated for the in-camera review. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 264 at 1-25)

The trial court was abundantly clear on 6/24/2019 what the schedule for the morning of 6/25/2019 was going to be. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 260 at 1-19)

Frequently being late and showing disrespect to the schedule set by the trial court was a regular occurrence on the part of Defendant-Appellant, who was late for the beginning of trial on 6/24/2029, he was late returning from lunch 6/24/2029, he was late for the start of day two and missed the in-camera review on 6/25/2029, in short he was constantly moving on his own schedule and squandered the court's time and incidentally his own time when it came down to the time allocated for the in-camera review of exhibits he wanted to offer into evidence despite the fact he had never complied with the pre-trial order to exchange exhibits. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 118 at 7-17 where Defendant-Appellant was late returning from lunch on 6/24/2019)

The Defendant-Appellant readily admitted he did not provide the exhibits he desired to offer into evidence, in discovery or as required by the pre-trial order. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 273 at 8-16)

Trial court has discretion in selecting sanction to be used because of noncompliance with rule requiring supplementation of answers to discovery; burden of establishing the justification for exclusion of testimony rests on the party requesting exclusion. See *Cucciolillo v. East Ohio Gas Co.*, 4 Ohio App.3d 36 (7th App. Dist. 1980) and here Plaintiff-Appellee declared that he had not been provided any of the desired evidence by Defendant-Appellant, and did even know it existed because its existence had never been disclosed, and Defendant-Appellant agreed he had not provided the exhibits/evidence nor disclosed the existence prior to trial. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 273 at 8-16) Plaintiff-Appellee met the burden to establish justification for exclusion.

Defendant-Appellant stated he had audio evidence which he insisted was allegedly probative of something [it actually appeared to be an attempt to use extrinsic evidence to impeach on a collateral matter]. The trial court inquired if Defendant-Appellant could summarize the audio or restrict himself to playing 1-2 minutes to make his point but Defendant-Appellant stated the audio was 90 minutes long and he would need an entire 90 minutes. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 232 at 4-25 and pg 233 at 1-14)

At one point the Defendant-Appellant stated he needed to play 400 hours of audio. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 241 at 3-8)

No reasonable trial court would allow a party to play 400 hours of audio, particularly audio whose existence had never been disclosed prior to the trial and particularly where the party seeking to offer the evidence was offered the opportunity to play a 1-2 minute summary of the audio and insisted he would need at least 90 minutes and would prefer 400 hours and then failed to even attend the in-camera review hearing.

There would also have been obvious issues with the surprise introduction of audio because Defendant-Appellant never provided any audio or even disclosed the existence of the same during any point prior to the trial at the moment when he wanted to introduce it. Plaintiff-Appellee would have been extremely prejudiced by being denied the opportunity to have the audio file inspected by an expert [computer forensic expert and an electronic engineer] for the purpose of demonstrating splicing, manipulation, fabrication, and the like (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 232 at 14-18) which were legitimate and significant concerns in light of Defendant-Appellant admitting he had been making textual posts on the internet under the name of Plaintiff-Appellee for the sake of impersonating the Plaintiff-Appellee (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 174 at 3-25 and pg 175 1-3) and indeed admitted that he had 553 separate accounts on his web forum under the names of different people and that all but 5 or 10 were accounts he controlled and used to post content that would be then attributable to other individuals. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 174 at 24-25 and pg 175 1-3)

The exclusion of evidence is an appropriate remedy for an extreme situation requiring the prevention of unfair surprise. *See- Di v. Cleveland Clinic Found.*, 60 N.E.3d 582 (8th App. Dist.

2016). Here the Defendant-Appellant had more than 3 years to provide exhibits or at least disclose the existence of evidence he wanted to offer at trial and he never did any such thing.

The trial court set aside 30 minutes for an in-camera review of a significant portion of the audio Defendant-Appellant wanted to introduce and Defendant-Appellant failed to attend the in-camera review. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 264 at 1-25)

The trial court was in possession of the following information:

1- Defendant-Appellant did not produce any documents or answer any of Plaintiff-Appellee's interrogatories;

2- Defendant-Appellant did not respond to approximately 50% of Plaintiff's Requests for Admissions in any fashion;

3- Defendant-Appellant gave bizarre responses to those Requests for Admission that he actually responded to;

4- Defendant-Appellant had been ordered to respond to Requests for Admissions no later than January 6, 2016;

5- Defendant-Appellant waited until June 24, 2019, the morning of the first day of trial, to make an oral motion to withdraw admissions;

6- Defendant-Appellant did not produce any exhibits or even provide a list disclosing the existence of exhibits, to Plaintiff-Appellee, as required by the pre-trial order prior to the trial;

7- At no time prior to the trial did Defendant-Appellant disclose or make available his desired exhibits to Plaintiff-Appellee;

8- Plaintiff-Appellee had provided his exhibits to Defendant-Appellant and had participated in and cooperated with discovery and abided by the pre-trial orders regarding disclosure and exchange of exhibits;

9- Defendant-Appellant was 29 minutes late on the second day of trial, June 25, 2019, for the in-camera review hearing that the trial court had set to review his desired evidence despite being explicitly warned against being late and being given exacting instructions that he was to be in his seat ready to go at 8:00 am [Plaintiff-Appellee arrived at 7:45 am] because the jury was coming in at 8:30 am;

10- Defendant-Appellant was given the opportunity to summarize his desired audio evidence in several minutes but stated he would need at least 90 minutes.

In light of the totality of the circumstances, the trial court did not abuse its discretion when it elected to exclude and deem inadmissible all of the Defendant-Appellant's evidence which was never provided or even disclosed prior to the trial.

The trial court made the correct ruling when it excluded Defendant-Appellant's desired evidence based on Defendant-Appellant's outrageous non-compliance with the pre-trial order, failure to even attempt to provide exhibits prior to trial, non-cooperation and non-participation in discovery, his being allowed to withdraw admissions the morning of trial, his declination of the offer by the trial court to play 1-2 minutes of audio to summarize his points, his insistence on at least 90 minutes and perhaps 400 hours, and then finally his failure to attend the in-camera review session scheduled the morning of the second day of trial prior to the jury being brough in. The exclusion of evidence is an extreme remedy but the trial court did not abuse its discretion when, in light of everything done by Defendant-Appellant, it elected to exercise its discretion to

exclude the evidence and to prevent unfair surprise, prejudice, and the needless delaying of the proceedings. Defendant-Appellant's conduct was outrageous and extreme and his non-compliance was willful and flagrant, he received generous consideration by being allowed to withdraw his admissions the morning the trial began and he was simply not entitled to the additional consideration he sought with regards to his surprise evidence.

FOURTH ASSIGNMENT OF ERROR

See the Third Assignment of Error.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

See the Third Assignment of Error.

Defendant-Appellant's Fourth Assignment of Error is about exclusion of evidence and is entirely duplicative of the Third Assignment of Error and Plaintiff-Appellee relies on the same authorities, logic, reasoning, rationale, and record citations for the Fourth Assignment as for the Third. Defendant cites no authorities and does not properly or meaningfully cite to the record. There is nothing new or unique to add.

FIFTH ASSIGNMENT OF ERROR

Whether or not the trial court erred by giving Defendant-Appellant the jury instruction that he asked for in regards to treating Plaintiff-Appellee as a public-figure or limited purpose public figure for defamation purposes.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. It isn't clear there is an actual issue for review. Rather it seems that Defendant-Appellant doesn't understand or realize he received the public figure jury instruction he requested. The trial court instructed the jury that to find for Plaintiff-Appellee they had to find actual malice on the part of Defendant-Appellee and the instruction given was an instruction consistent with the actual malice standard of *New York Times v. Sullivan.* In essence the present issue is one of a litigant [Defendant-Appellant] who unfortunately doesn't actually comprehend that he got the exact jury instruction he asked for. Appellant's Fifth Assignment of Error is therefore wholly lacking in merit.

The Defendant-Appellant requested that the jury be given an instruction to regard Plaintiff-Appellee as a public-figure or a limited purpose public figure.

The trial court gave the jury the instruction requested by Defendant-Appellant with a definition of Actual Malice and instructed the jury they had to find Actual Malice existed. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 568 at 1 and pg 569 at 1-4)

To quote the exact jury instruction given by the trial court in regards to defining actual malice, "Actual malice occurs when the defendant makes a false statement either with the knowledge that it is false or with reckless disregard of whether it is false or note." (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 569 at 1-4)

Defendant-Appellant received the exact jury instruction he requested, that of a defamation plaintiff being a public-figure or limited purpose public figure jury instruction per the Sullivan standard. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)

Defendant-Appellant stated that despite learning the truth as to what happened to the woman who was killed in an automobile accident [that Plaintiff-Appellee was not involved] that he continued to broadcast and write, as recently as January 2015 that Plaintiff-Appellee had killed the woman in an act of vehicular manslaughter for insurance fraud purposes. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 139 at 20-25 and pgs 140-143)

When Defendant-Appellant made the statements he had no knowledge as to the truth of the statements and he continued to make the same statements, repeating that Plaintiff-Appellee was the one responsible for the death of the woman in question, even after having gained actual knowledge that Plaintiff-Appellant was not responsible.

The trial court took note of the fact that Defendant-Appellant readily admitted to posting that Plaintiff-Appellee had killed a woman and continuing to disseminate the statements and maintaining them online even after he gained actual knowledge that the statements were untrue.

This is sufficient to meet the Sullivan "actual malice" standard. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 470 at 11-17)

The Defendant-Appellant had also stated that Plaintiff-Appellee was terminated from employment at the Perry Nuclear Power Plant for attempting to sabotage the reactor core and cause a nuclear incident. Plaintiff-Appellee was suing Defendant-Appellant for false light and defamation in that regard. Defendant-Appellant admitted at trial that he had absolutely no knowledge of what happened at the Perry Nuclear Power Plant, he had no idea why or under what circumstances Plaintiff-Appellee's employment came to an end, and he had no factual or evidentiary basis for his claims that Plaintiff-Appellee had attempted to sabotage the reactor and had been fired. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 175 at 18-25 and pgs 176 to 180)

Defendant-Appellant admitting at trial that he continued to make statements, as factual assertions, about Plaintiff-Appellee having killed a woman in South Carolina an act of vehicular manslaughter for insurance fraud even after he learned it was not Plaintiff-Appellee, and that Defendant-Appellant made statements about Plaintiff-Appellee's employment ending and the circumstances under which it ended, when Defendant-Appellant admitted having no knowledge, no factual basis, and no evidentiary basis for the statements, is the very definition of Sullivan "actual malice" for libel/defamation purposes for a public figure or limited purpose public figure.

Defendant-Appellant also stated that he had publicly accused Plaintiff-Appellee of barratry and fraud with the stated goal of getting Plaintiff-Appellee disbarred. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 184 at 13-24)

There was a sufficient basis to support a jury finding of Sullivan "actual malice" for liability for defamation of a public figure and common-law "actual malice" to support an award of punitive damages. The jury also received the correct instruction as to the common-law "actual malice" required for punitive damages. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 579 at 19-25 and pg 580 at 1-25 and pg 581 at 1-13)

Defendant-Appellant received the jury instruction he requested, a public figure instruction, and he lost because his Sullivan "actual malice" was clearly obvious from the record evidence of his own testimony wherein he admitted to having actual knowledge that some of his defamatory statements about Plaintiff-Appellee were false, and in other instances having a reckless disregard as to the veracity of the statements.

SIXTH ASSIGNMENT OF ERROR

Whether or not the trial court erred by allowing a litigant who was being counter-claimed for allegedly defaming the other litigant as a child molester, to explore the truth or substantial truth of the allegedly defamatory statement and to speak to the matter during closing arguments.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. When a party [Defendant-Appellant] pursues a counter-claim for defamation, with the allegedly defamatory statement being that Plaintiff-Appellee allegedly declared him to be a child molester, may the Plaintiff-Appellee explore the truth of the underlying statement and speak to the matter during closing arguments?

By Defendant-Appellant's own admission, from his own testimony, his reputation in his community is that of a "domestic terrorist." (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 394 at 19-21)

Plaintiff-Appellee- "In your own assessment, what is your general reputation in Southwestern Missouri?"

Defendant-Appellant- "Oh they think I'm a domestic terrorist."

During closing arguments Plaintiff-Appellee would naturally be allowed to summarize the evidence that had been presented and some of that evidence included Defendant-Appellant's testimony as to his own reputation in his own community in Missouri, specifically his reputation as a domestic-terrorist. Plaintiff-Appellee did not state as a factual assertion that Defendant-Appellant was indeed a domestic terrorist, only that his general reputation in his community was that of a domestic terrorist. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 512 at 5-14)

Defendant-Appellant discussed, in rather graphic and lewd words, the allegations and charges leveled against him in Missouri when he was indicted for statutory sodomy on his six year old grandson. “I was accused of molesting my re-retarded six year old grandson by kissing his penis and licking his crack, I guess once every day and twice on Sunday.” (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 355 at 9-13)

The Defendant-Appellant also admitted, through his own testimony, that he spent more than 3 years in a state mental hospital in Missouri in connection with the child molestation case. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 193 at 17-25 and pg 194 1-25 to pg 195 at 1-12)

Plaintiff-Appellee would obviously be allowed to reference facts and statements that had been offered into the record as testimonial evidence during the trial. When accused of defamation, Plaintiff-Appellee would naturally be allowed to argue that the statement against the defamation litigant was true or substantially true.

There was no evidence except Defendant-Appellant’s own unsupported testimony, that Plaintiff-Appellee had ever called him a “convicted child molester” although Plaintiff-Appellee admitted that he opined that in his view and opinion Defendant-Appellant was probably a pedophile and a child molester and should have been convicted while conceding he had not been convicted. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 236 at 25 and pg 237 at 1-21)

The trial court did not err in allowing Plaintiff-Appellee to make closing arguments that referenced testimony from the trial and that spoke directly to the issues in controversy, specifically the claims, counter-claims, and defenses. Defendant-Appellant elected to pursue a

counter-claim for defamation and alleged that he was defamed by Plaintiff-Appellee as a child molester. Truth is an absolute defense to an accusation of libel per se.

In an action for a libel or a slander, the defendant may allege and prove the truth of the matter charged as defamatory. Proof of the truth thereof shall be a complete defense. In all such actions any mitigating circumstances may be proved to reduce damages." R.C. 2739.02

SEVENTH ASSIGNMENT OF ERROR

Whether or not the trial court erred as to the issue of statute of limitations.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. The trial court did not err in its application of the statute of limitations or in the date range that Plaintiff-Appellee was restricted to.

The Trial Court restricted Plaintiff-Appellee to only pursuing [and only being allowed to evidence of] claims/causes of action for defamation that happened within one year prior to the commencement of the case in the Lake County Courts. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 118 at 25, pg 119 at 1-9) which limited Plaintiff-Appellee to evidence of defamation that had occurred on or after 9/18/2014 which was one year prior to the date of the filing of the Complaint 15CV001590 (T.d. 2 in 15CV001590) or which had occurred on or after 3/22/2016 which was one year prior to the date of the filing of the Complaint in 16CV000825 which was filed on 3/22/2016 in Mentor Municipal before being transferred to Lake County Court of Common Pleas.

Defendant-Appellant cites *Portee v. Cleveland Clinic Found*., 155 Ohio St.3d 1, 2018-Ohio-3263, but he does not understand it nor properly use it, and it was not actually applicable to the facts or procedural posture of the case at bar. Frankly the trial court probably erred in applying Portee to deny Plaintiff-Appellee the use of the savings statute, but Plaintiff-Appellee proceeded to litigate the case as was, waived the issue and has elected not to raise the issue as a cross-appeal because even with the limitation against pursuing causes of action for libel that occurred prior to 9/18/2014, Plaintiff-Appellee still won on causes of action for libel which

Plaintiff-Appellee and the trial court agreed were not time-barred and Plaintiff-Appellee has not raised any issues of alleged error on appeal and thus the issue of whether or not Portee would apply to the instant action is not up for review. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 118 at 25, pg 119 at 1-9)

Portee dealt with actions initiated in the United States District Courts in other states [states other than Ohio] which were terminated otherwise than upon the merits and which were then refiled in Ohio state court. The dispute with Lindstedt began in April 2014 with the filing of a complaint in United States District Court for the Northern District of Ohio, that case was initiated in a court located within Ohio, it was electronically transferred to a United States District Court in Missouri and then dismissed without prejudice for lack of subject matter jurisdiction. In September of 2015 Plaintiff-Appellee filed the first case, 15CV, in Lake County Court of Common Pleas; it was based on libel which had occurred from September 2014 to September 2015. In March 2016 Plaintiff-Appellee filed the second case, in Mentor Municipal Court, which was transferred to Lake County Court of Common Pleas, the 16CV case, with the cases consolidated for all purposes. That second case, the 16CV case, pursued claims for libel occurring after the filing of the 15CV case in September 2015 and prior to the filing of the case in March 2016.

Portee is not relevant because the cases Plaintiff-Appellee filed against Defendant-Appellant in Lake County Ohio were technically not refilings of earlier claims but were filings for new libel that had occurred no later than within 365 days of the date of the filing of the 15CV complaint and the 16CV complaint. Furthermore, *Portee* dealt with cases initiated in the United States District Courts of other states, Plaintiff-Appellee never initiated any case in another state.

Plaintiff-Appellee's case in 2014 was initiated in the Northern District of Ohio which would distinguish this situation from the situation addressed in *Portee*.

The trial court did not allow Plaintiff-Appellee to avail himself of the savings statute and declared the time range within which Plaintiff-Appellee's claims were to be limited and that he could not present exhibits for libel unless it had occurred on or after 9/18/2014. Plaintiff-Appellee did attempt to invoke the savings statute to be able to extend the date range for libel back to 4/18/2013 which would have exactly 1 year prior to the initiation of the first libel case in Northern District of Ohio but the trial court did not permit that use of the savings statute and as such no such exhibits came in. Plaintiff was prohibited from showing any exhibits as to libelous publications unless publication was on or after 9/18/2014. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 17 at 5-15, pg 22 at 10-16 and 22-25, pg 23 at 1-11, pg)

The issue of "first publication" raised by Defendant-Appellant is also a red herring because Plaintiff-Appellee did not sue Defendant-Appellant for republication of prior published statements from earlier dates, Plaintiff-Appellee sued for new, fresh, recent libel. It was not an instance of suing in 2015 for a verbatim republication of a libelous statement originally created in 2012 or 2013 but rather suing in 2015 for a new libelous statement from 2015. Defendant-Appellant has chronically and routinely defamed Plaintiff-Appellee on a near daily basis since at least September 2014 with new defamation occurring each day.

Defendant-Appellant seems to think that a statute of limitations operates in such a way that if he begins defamation with "Bryan Reo has HIV and Herpes" in 2010 and progresses to "Bryan Reo murdered a woman Catherine Williams in South Carolina" in 2015, that because he began libeling in 2010, the libel in 2015 should also be time-barred because the libel in 2010 is no longer actionable as of 2015. There is no rationale or logical to that view but that does appear

to be Defendant-Appellant's view although it is not entirely from the incomprehensible rant that he provides as his "assignment of errors."

The trial court required Plaintiff-Appellant to restrict himself to the date range of no earlier than 9/18/2014 which was exactly one year prior to the filing of the 15CV complaint. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 139 at 2-13)

Plaintiff-Appellee was also restricted to exhibits one year prior to the filing of the 16CV case. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 144 at 3-21)

Defendant-Appellant repeatedly raised issues with dates at trial but all of Plaintiff-Appellee's exhibits were within the time-range provided by the court. (T.d. 199, trial transcript 6-24-19 Trial Day 1, pg 175 at 21-25 and pg 176 at 1-2)

Defendant-Appellant's assignment of error is completely meritless in light of the fact that all of Plaintiff's claims were timely and none were time-barred.

EIGHTH ASSIGNMENT OF ERROR

Whether or not the trial court erred by granting a directed verdict as to malicious prosecution and abuse of process.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. The trial court did non err with any of its rulings regarding the disposition of nine out of ten of Defendant-Appellant's counter-claims via Plaintiff-Appellee's motion for a directed verdict.

The court properly granted the directed verdict motions as to the relevant counter-claims for abuse of process, malicious prosecution, and tortious interference, as well as the others. (T.d. 199, trial transcript 6-25-19 Trial Day 2, pg 448 at 18-25, pg 449 to pg 465)

Defendant-Appellant pleaded causes of action that were not causes of action, "vexatious litigator," and alleged all manner of frivolous counter-claims, none of which had any evidentiary basis or factual support. His own testimony worked against him and in-between rambling and incoherent rants he readily admitted he had no factual basis to show that Plaintiff-Appellee had ever colluded with anybody to improperly shut down his websites or that Plaintiff-Appellee was ever part of a malicious combination or that his property or person had been improperly detained during any action because of Plaintiff-Appellee. Defendant-Appellant lost on his sole counter-claim [defamation] that was submitted to the jury. (T.d. 199, trial transcript 6-26-19 Trial Day 3, pg 603 at 19-24)

The trial court did not err in its rulings on the motions for directed verdicts, particularly in light of the manner in which Defendant-Appellant presented his case, his non-participation in discovery, and the simple fact that no reasonable trier of fact could have concluded in his favor

for the 9 causes that were disposed of via directed verdict because he failed to properly plead his causes, he failed to meet his burden of production and persuasion, and his claims were legally insufficient and were unsupported by any facts or record evidence and his own testimony was largely rambling incoherent nonsense.

NINTH ASSIGNMENT OF ERROR

There is no actual error presented for review, only an incoherent rant about "preserving an issue" for alleged future review by the federal courts in regards to a sovereign citizen who appears upset he is not allowed to engage in unauthorized practice of law.

ISSUE PRESENTED FOR REVIEW AND ARGUMENT

1. Is the state of Ohio obligated to allow a sovereign citizen to engage in the unauthorized practice of law in an appeal on behalf of a corporate entity? Appellee says "no" and leaves the matter at that.

Plaintiff-Appellee disagrees with the rambling nonsense contained within Defendant-Appellant's Ninth Assignment of Error and simply wishes it to serve as yet one more reason why Defendant-Appellant's appeal should be dismissed in the entirety as a sanction, unless death threats and the threat of civil war against courts are the basis by which appeals are now heard.

CONCLUSION

For the reasons articulated in this Brief, the Court should not vacate the Judgment of the Trial Court, the Court should not set aside the Jury Verdict, the Court should not reverse the Trial Court as to its denial of Defendant-Appellant's motions for a new trial or for relief from judgment, this Court should overrule all of Appellant's assignments of error, and the rulings of the Trial Court should be affirmed. Indeed, for the reasons articulated in Plaintiff-Appellee's motion to dismiss the appeal, the entire appeal should be dismissed for the reasons provided in the brief that accompanied that motion. This court should consider forwarding Defendant-Appellant's threats against this court and the residents of Northeastern Ohio to the Lake County Prosecutor's Office, the Cleveland Federal Bureau of Investigation, and the United States Attorney for the Northern District of Ohio.

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 Appellant at:

Martin Lindstedt
338 Rabbit Track Road
Granby, Missouri 64844

On this _23 day of ___JUNE_____. 2020

X /S/ BRYAN ANTHONY REO