

IN THE SUPREME COURT OF OHIO

09-0810

Jeffrey L. Clemens,	:	On Appeal from the Lucas County
	:	Court of Appeals, Sixth Appellate
Appellant,	:	District
	:	
v.	:	Court of Appeals Case No. G-4801-
	:	CL-200801274
David A. Katz, et. al.	:	
	:	
Appellees	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JEFFREY L. CLEMENS**

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR
GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL
CONSTITUTIONAL QUESTION

All lawsuits begin with the filing of a complaint. The sufficiency of those complaints are of vital concern to not only the parties who are directly involved but to the courts themselves for it is the fair and timely resolution of such lawsuits that the public-at-large relies upon for its faith in the judiciary as well as belief in an unfettered access to the courts. The decision of the appeals court threatens this belief and makes a mockery of Rule 8 as well as imperils the rights set forth in Section 16, Article I of the Ohio Constitution wherein citizens are allowed access to the courts for redress of their grievances. This case is therefore one of public and great general interest.

And by setting the precedent that a lawyer before the Ohio State Bar can so blatantly bow to the will of federal authorities, the decision serves to weaken the capacity of citizens to defend themselves against egregious abuses of power by federal agents who otherwise make up the vast majority of the defendants in this case. In an age of ever-expanding federal presence in our lives, this is a major concern. For all practical purposes, as outlined in his original complaint, appellant was, on two significant occasions, virtually kidnaped by federal agents and taken out-of-state for extended periods of time. His appointed counsel took actual physical actions to assure that it happened, in one instance, in light of imminent release on bond well before any formal charges. Society must not tolerate kidnaping under guise of a criminal prosecution. The Supreme Court must correct the errors of the trial and appeals court. Liberty is too important a concept, as is due process, for courts to needlessly stray from their time-honored duty to assure fair proceedings.

Motions to dismiss are powerful tools and must not be abused in their use by motioning parties to avoid discovery or trial or, by a court, to clear dockets or oblige colleagues as appears

to be the situation here. A review of this case will serve a most important purpose: Assure that dismissal motions are handled properly in the lower courts given their prevalence and potential for abuse, especially with respect to pro se litigants taking up issues with federal prosecutions. Under the principles of federalism, the state and its various institutions, especially the judiciary, has a moral duty to protect its citizens from abuses of any kind – whether actual, apparent or potential – concerning federal authorities and their encroachment upon civil liberties.

The disregard by the appeals court of the issues put forth by the appellant in his appellate brief, for the benefit of litigants facing future appeals regarding sufficiency, must not become the norm [6 of 7 assignments of error were ignored]. A supreme court review will, once and for all, lay down the ground rules – establish an elements test or review standard – by which the lower courts throughout the state shall go about deeming whether complaints are sufficient or not.

Deeming a sufficient complaint as insufficient is analogous to slamming a door shut, locking it and waving the key in the air. Such an act is unbecoming of a court of law and must not be tolerated at any time or on any level for any reason, political or otherwise, despite an appeal process which, of course, when a litigant is unnecessarily forced to appeal, represents undue delay. This court can remedy this situation, and prevent others, by clarifying just exactly what is expected by Ohio Rules of Civil Procedure Rule 8 which states, in relevant part:

(A) A pleading that sets forth a claim for relief shall contain (1) a short and plain statement of the [claim]. (E)(1) Each averment of a pleading shall be simple, concise and direct. No technical forms of pleading or motions are required. (F) ***All pleadings shall be construed as to do substantial justice.*** [Emphasis added]

To prevent future publication of unsupported decisions and further disregard for Rule (F), a review offers an opportunity to set down a Golden Rule by which appellate courts must follow:

a) if a court is to render any opinion at all, then b) they shall render opinions that substantially

address issues put forth by an appellant and not merely cite conclusions necessarily convenient to lawyers, judges, law enforcement officers and court personnel who happen to find themselves defendants in lawsuits addressing claims of false imprisonment resulting from the misuse of court process. Unless this court defines certain thresholds, the lower courts will continue to abuse, ignore or otherwise sidestep Rule 8 of the Rules of Civil Procedure [and its mere “notice” of claims requirement] but, more seriously, the Ohio Constitution which states, in relevant part:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Quite simply, this court must assure that all courts [and lawyers] under its jurisdiction behave and doing so involves making an example of the instant case wherein the appeal court’s deficient review is an affront to both the Ohio Constitution and that of the United States, mostly, its due process clause addressing, most relevantly, a person’s fundamental right to the assistance of adequate counsel. Where an attorney’s actions deny a person due process, and a lower court’s actions deny a person access to the courts [for instance, allowing a Rule 56 summary judgment motion to be construed as a Rule 12 motion, denying it and therefore barring discovery], there exists multiple abuses of discretion suitable for review.

Attorneys should have the discretion to do certain things, of course, say, to continue court proceedings for good cause. But when done so for malicious reasons, as alleged in the instant complaint, such discretion shall be rightly questioned. To this very end, in addition to the aforementioned, this court has the opportunity to set a new standard of review for attorney discretion [and decide where such discretion crosses the line into inadequacy or misconduct] and therefore promote fair and efficient resolution of future legal malpractice claims throughout the state by clarifying what constitutes abuse of discretion by courts reviewing attorney malpractice claims.

Just as all civil cases begin with a complaint, all *criminal* cases [or nearly so] begin with an arrest, an eventual arraignment and, in most cases, an initial period of confinement. During such a period, criminal defendants [and courts], of course, take up the matter of defense counsel whether retained or appointed. But little do we realize, thousands of Ohio residents face federal prosecution each year in other states where, if they are not released per bail or bond arrangement, they are forcibly transported [tens of thousands of persons in a single year nationwide] and can literally end up thousands of miles away from those whose support is critical to the criminal defendant and his ability to effectively defend himself. This alone makes it especially important that such defendants have adequate counsel at every step of the way, particularly in the first days.

That is to say, given our federal system, *thousands* of Ohio residents are prosecuted each year by persons who are *not* sworn representatives of the state. The potential for abuse by far-off persons out-of-state with ill motive is tremendous and, in fact, is alleged in the instant complaint. [See Footnote, Page 13] This court, by reviewing this case and by force of its decision, has the unique opportunity to safeguard its citizens from the ill-will of out-of-state court representatives by letting the lower courts here in the state know what constitutes a valid claim for systematic false imprisonment and legal malpractice. What good is an otherwise exceptional judiciary here in Ohio when court districts in other states [both state and federal level] can snatch away its citizens by a mere slip of paper, an arrest warrant issued, at times, thousands of miles away but in a system – in this case, federal – where defendants, upon a consideration of flight risk and dangerousness [in absence of any issues thereof] can nonetheless be released in any jurisdiction?

A state judiciary is only as good as the training, experience and integrity of the lawyers who serve within it. And consistent with the duties and goals of the Supreme Court, all lower courts and their attending lawyers must, on occasion, as directed by the state's highest court in

reviews as sought here, adjust their practices in light of recognizing new or rising threats against the safety and well-being of the state's citizenry. The right of access to the courts and adequate counsel as well as realization of a growing potential threat to Ohio's citizens who face out-of-state federal prosecutions yet are initially incarcerated in Ohio and represented by Ohio attorneys make this case one of public and great general interest although likely a case of first impression.

This court, by its thoughtful review, has the opportunity to establish a standard by which a fundamental question is answered: What is required of an attorney, and *how* is an attorney, to vigorously defend a client, as otherwise required of the bar, who is only *temporarily* assigned or retained and, in any case, whether released or especially when detained, is due to appear in an out-of-state court and, as such, will necessarily have other counsel continue in his or her defense? This case presents the opportunity to make clear an answer to this all-important question, among others so implied, in the way of a fair, diligent and responsible review of this case.

STATEMENT OF THE CASE AND FACTS

On May 12, 2005, Appellant Clemens made a personal inquiry to a resident in Scituate, Massachusetts who was of interest in a lawsuit Clemens was conducting in Los Angeles. Less than two weeks after the inquiry, a federal prosecution commenced against Clemens for allegedly sending a threatening letter to an initial judge in said lawsuit, *Clemens v. Creative Artists*. The suit involved the movie *Rain Man*, a literary agency, Creative Artists, as well as a movie studio, Metro-Goldwyn-Mayer [MGM], and former literary agent, Michael Ovitz. After the appellant's arrest on May 25, 2005, the federal district court in Toledo, Ohio assigned Defendant-Appellee Jane Randall as counsel to Clemens. Although a bond hearing was set, such hearing was, the very next day, continued by Randall without telling Clemens and essentially cancelled. Clemens

was, for the next 8 ½ months, transported throughout the federal inmate transfer and detention system. He was released from the Metropolitan Detention Center, Los Angeles, on February 7, 2006 upon signing a time-served plea agreement and thereafter assigned for supervised release to Defendant Ruth Granberry, a United States Probation Officer in Toledo, Ohio.

From May 2006 to August 2006 Clemens sent numerous written requests to Granberry asking for permission to travel from to Massachusetts to address court matters stemming from the inquiry Clemens made on May 12, 2005 to the Scituate resident [who had immediately called 911 claiming “a strange man at her door”]. No requests were responded to in any way.

On the afternoon of August 21, 2006 Granberry contacted Clemens, by phone, and ordered him to appear in court the next day at 10 a.m. with respect to a supposed supervised release violation. Clemens said to Granberry that he did not receive any notice or summons. However, Granberry, insisted that Clemens appear in court and furthermore provided him a telephone number for Randall whom Granberry had said, to Clemens, the court had assigned her as counsel to him. Clemens contacted Randall, by phone, whereupon she told Clemens that the hearing the next day was a “prelim”. The following day, August 22, 2006, prior to a supposed preliminary hearing, Randall, Granberry and Defendant David Katz meet in chambers. Moments after the meeting, a hearing commenced. Upon an eventual oblique stipulation by Randall, on cue from Katz, Clemens was “found” in violation and sentenced to six month home confinement, restricted from traveling to Massachusetts [to address his legal matters], ordered not to have any contact with law enforcement, among other restrictions, all for the matter of a letter to Defendant Tom Greenawalt, from Clemens, asking for whereabouts of his address book otherwise missing since the day of his May 2005 arrest by Greenawalt in Huron, Ohio acting on a warrant sought by an FBI agent in Los Angeles who, as now known, lives less than a mile from Randall’s daughter.

On August 28, 2006, after much resistance from Randall to do so, Clemens filed a notice of his intent to appeal the August 22, 2006 order by Defendant Katz. As well, on the same day, Defendant Granberry visited Clemens at his home for the purpose of tending to a monitoring bracelet. Upon Granberry's departure, Clemens contacted Randall. A heated discussion ensued. After hanging up with Randall, Clemens removed his ankle monitor. Granberry immediately contacted Clemens, by phone, and ordered him into her office the next morning at which time Clemens was taken into custody. A few hours later Defendant Randall met with Clemens, in a holding cell, and in stating, "The prosecutor will not pursue an escape charge if you [Clemens] withdraw your appeal", she insisted Clemens withdraw his appeal.

On August 29, 2006, in fact, Randall withdrew the Clemens appeal. A few hours later a hearing took place before Defendant Armstrong who otherwise kept Clemens detained pending presentation of so-called release conditions from Defendant Randall. Clemens waived a probable cause hearing on a charge of "cutting bracelet". A hearing was scheduled for September 5, 2006 and Clemens was sent to the Lucas County Jail to await the hearing. Meanwhile, no conditions of release were filed with the court by the defendant.

However, on or about August 30, 2006, Defendant Granberry prepared a supplemental violation report charging Clemens with "violating home confinement" thus voiding an earlier report charging Clemens with "cutting bracelet". Clemens was not given a new probable cause hearing. Instead, without ever receiving notice of a supplemental report either from Granberry or Randall, Clemens was marshaled from the Lucas County Jail to a hearing before Judge Katz. Just minutes before the so-called revocation hearing commenced, Randall gave Clemens the new report. As such, Clemens had no consultation with Randall on the new charge before, minutes later, Katz ordered that supervised release be revoked and that Clemens be sent to a federal

medical facility for a psychological evaluation. Without the knowledge of Clemens, and without even briefing him on the subject or seeking his approval whatsoever, at one point, Randall made a surprise admission at the hearing without cause or prompting, telling the court that, "Clemens does not contest the allegation", an irony since Clemens never left his home except by the order of Granberry nor had the requisite court order stipulated electronic monitoring.

On September 7, 2006 Clemens wrote to Randall, from jail, asking her to withdraw as counsel and to make such fact known to the court. However, she did not do so. It was not until October 5, 2006 that Randall finally filed notice of her withdrawal in a document fashioned as a consent motion to substitute attorney David Klucas for Jane Randall. Meanwhile, on September 18, 2006, Katz filed an amended order. However, neither Randall nor Klucas informed Clemens of such appealable order. On October 13, 2006 Katz granted Randall's motion to substitute. Subsequently, Klucas filed three separate motions for reconsideration, dated October 24, 2006, November 15, 2006, and December 14, 2006, all denied. As a result, Clemens remained jailed for months and was eventually transferred to Chicago on November 1, 2006 and for the next two months participated in only about *three hours* of written tests and *three hours* of interviews.

On or about December 15, 2007, Jonathan Clemens, brother to the appellant, while otherwise infuriated at the whole matter of the appellant's August violation proceedings and transfer to a medical facility and especially the conduct of Randall, in addition to a November 2006 discovery that Randall was, in fact, assigned to Clemens on August 11, 2006 *before* any violation report was even written, discovered while doing extensive research on Randall that Randall, in fact, on May 27, 2005, for no stated reason, motioned for continuance of a bond review hearing on behalf of appellant. As a result of her motion appellant remained in custody, even though he was not yet charged with any offense, and ultimately marshaled to Los Angeles.

On February 9, 2007, a so-called final revocation hearing took place at which time Clemens was ordered released but nonetheless sentenced to time-served and an additional six months of home confinement despite Clemens having spent nearly six months in various jails. Supervised release was reinstated for three years as well as terms and conditions as previously imposed together with additional modifications as set out in the August 22, 2006 order by Katz.

On February 15, 2006, Clemens filed a notice of his intent to appeal, to the Sixth Circuit Court of Appeals, the February 9, 2006 order by Katz. In March 2006 Clemens filed his opening brief in the matter of his appeal, Case No. 07-3195, while in June 2006 he filed his reply to the government's opposition. Meanwhile, from March 2006 to May 2006, Clemens filed numerous motions and inquiries, most of which sought resolution of issues stemming from the August 2006 proceedings and most of which were denied. On May 30, 2007, Katz issued an order instructing the court clerk not to accept any additional filings from or on behalf of Clemens.

On June 6, 2007, Clemens filed, with the Central District of California, a Section 2255 motion for habeas corpus relief in the original 2005 prosecution of Clemens seeking to set aside his February 7, 2006 plea agreement on the basis of newly-discovered information concerning so-called Document 52. Such document from the docket in the original prosecution of Clemens contains discrepancies indicating an improper and highly suspicious early assignment of defense counsel by the court [that, by the way, echoes the August 11, 2006 early assignment of Randall] as well as prosecutorial misconduct – a scheme to keep Clemens detained – by an in-chambers meeting authorizing the transport of Clemens to an out-of-state hearing [on matter of a recusal motion] wherein Clemens never arrived and by his lengthy and misdirected transport was unduly harmed in his ability to defend himself, get released, have access to his files, prepare and receive a fair and speedy trial. The motion was denied September 23, 2007. *An appeal is still pending.*

And finally, on July 2, 2007, Clemens filed this present action in the Lucas County Court of Common Pleas, Toledo, Ohio primarily alleging a conspiracy to commit false imprisonment regarding the August 2006 sentencing of Clemens and legal malpractice with respect to his defense counsel who, it is alleged, willfully and wantonly misled and misinformed appellant about the nature of the August 2006 hearing at which appellant found himself sentenced before even having read or understood the charge against him, a situation that was again repeated two weeks later at a second related hearing. On July 3, 2007, all ten named defendants were served a summons and complaint by certified mail.

On July 23, 2007 the appellant voluntarily withdrew six defendants citing reasons of case management and economy. On August 3, 2007 Defendant Cassel motioned to dismiss citing an immunity defense. On August 6, 2007 the case was removed to federal district court for hearing and disposition of matters pertaining to the federal defendants. On August 7, 2007 Defendant Gavin de Becker, Inc. motioned to dismiss citing a collateral estoppel argument based on a prior stipulated agreement of settlement in *Clemens v. Creative Artists*, technically an unrelated case. Nonetheless, the plaintiff voluntarily withdrew Defendant Gavin de Becker, Inc. on August 9, 2008 and furthermore filed an opposition to the Cassel motion to dismiss based on the argument that an evaluation of Clemens by Cassel was neither court-ordered nor by consent of Clemens but a result of Defendant Granberry wantonly and knowingly over extending her authority.

On August 20, 2007 the appellant motioned to remand Defendants Randall and Cassel to state court and furthermore submitted an opposition to Cassel's representation of her exhibits as providing consent for an evaluation as well as a request to reinstate previously withdrawn parties. On August 28, 2007 the case was remanded to the federal district court where in October 2007 that court granted Cassel's motion to dismiss as well as deemed all federal defendants as having

immunity. Appellant filed a notice of appeal but did not file an opening brief as he was, for 60 days, incarcerated as result of an October 2, 2007 violation hearing wherein Clemens admitted to an unauthorized viewing of his file at Court Diagnostic, Defendant Cassel's employer, following a counseling session in September 2007 [file was on a nearby desk]. After completion of the 60 days, the appellant, as agreed to in his plea, was released from federal supervision on December 7, 2007. From January 2008 to April 2008 the appellant resumed *discovery requests* of the remaining defendant, Jane Randall, and her counsel. *No such requests were ever answered.*

On April 17, 2008 the state court deemed the case as having been remanded from the federal district court and directed that a pre-trial discovery hearing be set for May 15, 2008 with respect to remaining party, Jane Randall. Meanwhile, on March 12, 2008 the state court, at the request of the presiding judge [no specific reason cited], reassigned the case to another judge pursuant to Rule 5.02(D) of the Local Rules of the Lucas County Common Pleas Court. As well, Randall was put on notice of her deposition on April 10, 2008 but she did not, in fact, appear.

On May 14, 2008, however, Defendant Randall motioned for judgment on the pleadings pursuant to Rule 12(C) and served the appellant notice of said motion via email on the afternoon of May 14, 2008 which appellant read, for the first time, on the morning of May 15, 2008, a day upon which parties were scheduled to meet in a pre-trial discovery hearing. At such hearing, a visiting judge, sitting by assignment, and absent any written request from Randall seeking relief from discovery [despite her attaching, to her motion, documents from outside the proceedings], directed that discovery shall not commence and scheduled deadlines for responsive pleading on the matter of Randall's motion. A status pretrial conference was scheduled for July 24, 2008 and later cancelled on July 17, 2008 pending the trial court's decision on the Randall motion. On July 31, 2008 the trial court granted Randall's motion for judgment on the pleadings. On August

13, 2008 the appellant filed a notice of appeal of the July 31, 2008 judgment as well as a *motion for reconsideration* based upon new information regarding Defendant Ralph Sozio, federal agent in New York and, as discovered earlier in July 2008, colleague of the Scituate resident to whom appellant inquired on May 12, 2005. *The court has not ruled upon this latter motion.*

On September 12, 2008, Clemens filed his opening brief with the Court of Appeals for the Sixth Appellate District [Lucas County, Ohio]. As tense issues arose with opposing counsel that interfered with completion of his opening brief before the deadline, on September 12, 2008 Clemens sought a continuation to file an amended brief and was subsequently given leave by the court to file an amended brief by October 2, 2008. However, much to the surprise of Clemens, in Massachusetts the following week, Clemens was ordered, by a Scituate judge, to represent himself at a hearing-turned-impromptu trial [in regards to the 911 call that followed his May 12, 2005 inquiry, noted previously], was convicted for disorderly conduct [by sole testimony of the arresting officer] and sentenced to six months incarceration, the maximum allowable under law [the matter is in appeal and fully briefed]. As such, Clemens was not able to file an amended brief nor attend the oral argument scheduled for January 26, 2006 in regards to his civil appeal.

On March 20, 2009 the Sixth District upheld the Lucas County Court of Common Pleas July 2008 decision. Appellant, on March 30, 2009, filed a *reconsideration motion* based upon obvious error [6 of 7 assignments of error not addressed; incomplete brief argues them despite] and new information regarding the Scituate proceedings. *The motion has yet to be ruled upon.*

Despite these facts, filings and events, and considering *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161 (material allegations of complaint and all reasonable inferences arising therefrom must be accepted as true), the appeals court ruled that, as for complaint, no material factual issues exist. As the following argument shows, this is clear reversible error having broad implications.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: The sufficiency of complaints are determined pursuant to Ohio Rules of Civil Procedure Rule 8 which otherwise deems Ohio a notice pleading state; alleged facts are not required to be pled with specificity.

The appeals court decision sets a dangerous precedent by not recognizing the nexus between violations of due process and legal malpractice and, especially, by reducing the subject complaint – 34 pages and 160+ alleged facts – to an oversimplified: “[A] request for continuance while representing a client does not constitute support for a claim of false imprisonment” [P.4]¹ especially when the complaint, in obliging the Rule 8 notice requirement, offers this statement:

Allegations herein are supported by facts and evidence contained in public court records, violation reports, the testimony of Jeffrey L. Clemens, the testimony of [family members], *facts obtainable under Discovery*, the testimony of past and present employees of the U.S. Secret Service, the Federal Bureau of Investigation, the U.S. Probation Office, the Scituate, Massachusetts Police Department, and others. [Page 32] [Emphasis added]

[It] does not render the plaintiff’s complaint [subject to dismissal] that each element of its cause of action was not set forth in the complaint with crystalline specificity. *Border City S & L Ass’n v. Moan*, 15 Ohio St.3d 65, 472 N.E.2d 350, 15 Ohio B.159, 1984 Ohio LEXIS 1264 (1984)

Under Rule 8(A) much less emphasis is placed on the form of the language in the complaint [details minimized] so long as the operative grounds underlying the claim are set forth as to give adequate notice of the nature of the action. *Conley v. Gibson*, 355 U.S. 41 at 47, 48 (1957)

¹ Appellant was, at all times from May 25, 2005 until December 7, 2007, by sake of his federal detention and supervision, and by no small contribution of appellee, attorney Jane Randall, restricted from physical travel and from access to the Internet. As such, he had little or no ability to investigate i.e. do further fact-finding beyond the then current and available record prior to deadlines in filing his complaint. Nonetheless, numerous newfound facts were introduced to the pleadings before the trial and appeals court made their final rulings despite the formal shutdown of discovery in the case by the trial court. Two such revelations cut directly to the malice which befell both the original prosecution of the appellant by the feds as well as his violation proceedings: 1) U.S. Attorney Stephen Clymer, who signed the indictment of Clemens in June 2005 two weeks after Randall sabotaged the release of Clemens, is a colleague at Cornell Law School of Jay Rakow, former longtime general counsel for MGM, a defendant in the civil case wherefrom the indictment arose, [Rakow, for instance, hosted Clymer, a Cornell law professor, at his California residence in the fall of 2003] *continued*

Proposition of Law No. II: When Ohio Rules of Civil Procedure Rule 12 motions for judgment on the pleadings are essentially treated as a Rule 56 summary judgment motion, courts must inform parties and, as such, allow any discovery as may bring to light facts that support a claim for relief.

In Randall's attempt to label appellant's complaint as but a "nonsensical narrative of a national conspiracy", her counsel attached, to her motion, a copy of a document, among others, that appellant had filed in Los Angeles months earlier. As such, the motion was mislabeled as a Rule 12(C) when it should have been a Rule 12(B)(6). This mislabeling avoids appearance of a Rule 56 motion for summary judgment where the court is required to give notice to the parties and allow discovery such that may bring to light facts that support claims. Appellant brought up Rule 56 issues in his pleadings yet the appeals court made no reference to them in its decision. Whether or not a court expressly states, when the court considers matters outside the pleadings, it is converting a Rule 12(B)(6) motion to a Rule 56 motion, and pursuant to Rule 12 (B) the court must notify all parties of the conversion. Failure to provide such notice constitutes reversible error. *State ex rel. Baran v. Fuerst*, 55 Ohio St. 3d 94, 563 N.E.2d 713 (1990) Unless a [Rule 12] motion is properly converted into a summary judgment motion, the ruling must test only the sufficiency of the complaint. *Slife v. Kundtz Properties, Inc.*, 40 Ohio App.2d 179, 69 Ohio Op. 2d 178, 318 M.E.2d 557 (1974) The appeals court sets dangerous precedent when it ignores the Rule 56 issue. If done so purposely, then surely the court is only pretending to be a review panel.

continued and 2) Larry Darden, an attorney from Pasadena, California [where the supposed judge victim in the Clemens indictment resides, himself a dear friend of a former MGM chairman], is the father to Jane Randall's daughter's husband [who, of course, together with the daughter, lives less than a mile from the FBI agent who swore out the arrest warrant of Clemens on May 24, 2005]. He is as well general counsel for the United Church of God who has long retained the Beverly Hills law firm of Rosenfeld, Meyer and Susman [a few blocks from Creative Artists], longtime law firm for MGM [a Ken Meyer of such firm was a senior executive at MGM when it produced Rain Man, the movie at issue in the litigation that led to the indictment of Clemens]. Add the fact that Defendant Vernelis Armstrong, the magistrate judge who assigned Randall in both 2005 and 2006, has a son, Gregory Coy, who lives only a few blocks from the federal courthouse in Los Angeles where Clemens was, after Randall's continuance motion, hauled off to from Ohio and prosecuted in 2005, and further add the fact that MGM's attorney in the Clemens litigation was Gary Urwin, a Toledo native [his colleague, Mike Amerian, clerked for the alleged judge victim in the Clemens indictment when he [Clemens] filed his MGM case in 2000], it is not difficult to see that there was very likely something dark and nefarious happening below the surface in the prosecution of Clemens.

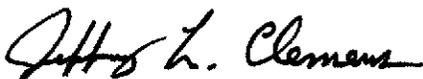
To make the above intentionally brief argument more clear on the subject of legal malpractice and its subtle and deleterious effect on due process, one simply has to consider the simple act of driving a car across town. It is certainly a normal and lawful thing to do ordinarily. But to drive a car across town, say, in order to deliver it [knowingly or with wanton disregard] to a group of thugs for them to use in commission of a crime is to be an accessory before-the-fact.

Appellee Randall's motion to continue [May 27, 2005] and other acts [August 2006] make her something analogous to an accessory before-the-fact and to allow it is just plain wrong as those simple and singular acts, as clearly stated in the appellant's original complaint in this matter, led to significant loss of the appellant's liberty. Untold thousands of Ohio residents are at potential risk of being similarly taken away by federal agents working for out-of-state federal authorities not all of which have good intents [See Footnote, previous page]. In almost every case, the first line of defense for them when, in fact, arrested is an attorney practicing before the Ohio Bar. This court must help preserve the integrity of these first-line defenders by reviewing this case, reversing the errors of a misguided but well-intended appeals court and, by its review, informing the lower courts of what deems a complaint sufficient and how it is to be so deemed whether by some test such as *Faulkner* or *Vahilla* or other test, new or old, as the court sees fit.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and a substantial constitutional question. The appellant requests that this court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits.

Respectfully submitted,



Jeffrey L. Clemens, Appellant

Dated this 1st day of May 2009

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CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the State of Ohio. I am over the age of eighteen. My address is:

412 Dockway Drive Huron, OH 44839

On May 1, 2009, I served the within document:

MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANT JEFFREY L. CLEMENS

on the defendant-appellee in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon prepaid for FIRST CLASS in the United States mail, Huron, Ohio addressed as follows:

Robert H. Eddy
Gallagher Sharp
420 Madison Avenue, Suite 1250
Toledo, OH 43604

Attorney for Defendant-Appellee
Jane S. Randall

I declare under penalty of perjury that the foregoing is true and correct.

Signature: Donald J. Clemens
Donald Clemens

Date: 5-01-09

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IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

Jeffrey L. Clemens
Appellant

Court of Appeals No. L-08-1274
Trial Court No. CI07-4650

v.

David A. Katz, et al.
Defendant

DECISION AND JUDGMENT

[Jane S. Randall, Appellee]

Decided: MAR 20 2009

* * * * *

Jeffrey L. Clemens, pro se.

Robert H. Eddy and Lori E. Brown, for appellee.

* * * * *

SINGER, J.

{¶ 1} This is an appeal from a judgment issued by the Lucas County Court of Common Pleas which granted a Civ.R. 12(C) motion for judgment on the pleadings and dismissed all claims against appellee.

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{¶ 2} In July 2007, appellant, Jeffrey L. Clemens, filed a 34 page complaint against ten defendants, including federal court agents and appellee, Jane S. Randall, alleging various claims related to a previous criminal case in federal court. Randall represented appellant in probation violation proceedings.

{¶ 3} All defendants, with the exception of Randall, were dismissed from the suit. Randall filed a Civ.R. 12(C) motion for judgment on the pleadings, which the trial court ultimately granted. The trial court found that appellant had failed to set forth any facts or allegations in support of his claims for false imprisonment, willful infliction of emotional distress, willful negligence, violation of constitutional rights, and professional malpractice. Appellant now appeals that judgment.

{¶ 4} Pursuant to 6th Dist.Loc.App.R. 12(A), we sua sponte transfer this matter to our accelerated docket and, hereby, render our decision. Although appellant lists seven assignments of error, he has argued only the first one, stating that the trial court erred in granting the Civ.R. 12(C) motion as to his claim for false imprisonment.

{¶ 5} Civ.R. 12(C) states, "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings." For purposes of a Civ.R. 12(C) motion for judgment on the pleadings, the material allegations of plaintiff's complaint and all reasonable inferences arising therefrom must be accepted as true. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165-166.

{¶ 6} On appeal, the standard of review for a Civ.R. 12(C) motion is the same as the standard of review for a Civ. R. 12(B)(6) Motion. *Estate of Heath v. Grange Mutual Casualty Company*, 5th Dist. No. 02CAE05023, 2002-Ohio-5494, ¶ 8-9. Appellate review of the dismissal of a complaint based upon a motion for judgment on the pleadings requires an independent review of the complaint to determine if the dismissal was appropriate. *Id* at ¶ 8. Judgment on the pleadings may be granted where no material factual issue exists and is restricted solely to the allegations contained in those pleadings. *Peterson, supra; Nelson v. Pleasant* (1991), 73 Ohio App.3d 479, 481.

{¶ 7} Under the notice pleading requirements of Civ.R. 8(A)(1), the plaintiff only needs to plead sufficient, operative facts to support recovery under his claims. *Doe v. Robinson*, 6th Dist. No. I-07-1051, 2007-Ohio-5746, ¶17. Nevertheless, to constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions. See *DeVore v. Mut. of Omaha Ins. Co.* (1972), 32 Ohio App.2d 36, 38.

{¶ 8} Under Ohio common law, "false imprisonment occurs when a person confines another intentionally 'without lawful privilege and against his consent within a limited area for any appreciable time, however short.'" *Bennett v. Ohio Dept. of Rehab. & Corr.* (1991), 60 Ohio St.3d 107, 109. Therefore, to prove a claim for false imprisonment in Ohio, a plaintiff must demonstrate that he was intentionally confined without lawful privilege and against his will or consent within a limited area for any appreciable time.

See *Roberson v. Dept. of Rehab. & Corr.*, 10th Dist. No. 03AP-538, 2003-Ohio-6473, ¶ 10, citing *Bennett*, supra. However, an action for false imprisonment cannot be maintained when the imprisonment is in accordance with the judgment or order of a court, unless it appears such judgment or order is void on its face. *Bradley v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 07AP-506, 2007-Ohio-7150, ¶ 10, citing *Bennett*, supra.

{¶ 9} Our review of the record and the pleadings reveals that at the time related to appellant's claims against Randall, he had been taken into custody pursuant to an alleged probation violation pertaining to a federal case. Appellant's complaint provided 34 pages of "facts" and descriptions of the events leading up to his lawsuit. Some of the facts alleged indicate that appellant disagreed with or did not like the outcome of appellee's actions as his attorney. No facts, however, indicate that Randall was responsible for appellant being taken into custody. Contrary to appellant's suggestion, a request for a continuance while representing a client does not constitute support for a claim of false imprisonment.

{¶ 10} Appellant's complaint contains many naked legal conclusions, without operative facts to support or relate to his claims. Consequently, the complaint simply did not meet even minimal notice pleading requirements. Therefore, the trial court properly granted appellee's Civ.R. 12(C) motion for judgment on the pleadings as to the false imprisonment claim.

{¶ 11} In addition, since appellant's brief has failed to set forth any argument in support of his other six assignments of error, and based upon our review of the record, we conclude that the trial court properly granted appellee's Civ.R. 12(C) motion as to appellant's remaining claims.

{¶ 12} Accordingly, appellant's assignments of error one through seven are not well-taken.

{¶ 13} The judgment of the Lucas County Court of Common Pleas is affirmed. Appellant is ordered to pay the costs of this appeal pursuant to App.R. 24. Judgment for the clerk's expense incurred in preparation of the record, fees allowed by law, and the fee for filing the appeal is awarded to Lucas County.

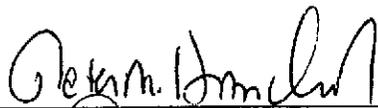
JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

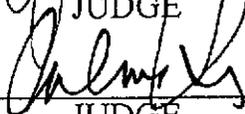
Peter M. Handwork, J.

Mark L. Pietrykowski, J.

Arlene Singer, J.
CONCUR.



JUDGE


JUDGE


JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.

ASSIGNMENTS OF ERROR

1. The trial court erred in deeming that plaintiff failed to assert that his imprisonment was unlawful with respect to a two element *Faulkner* test; the plaintiff presented numerous facts in which a reasonable inference can be made that proceedings leading to plaintiff's imprisonment were unlawful; plaintiff's complaint is sufficient, per Ohio Rules of Civil Procedure Rule 8, to support a claim of conspiracy to commit false imprisonment.
2. The trial court erred in deeming that plaintiff completely failed to allege facts that the defendant breached her duty or to show a causal connection between the conduct and any resulting loss with respect to a three element *Vahilla* test; the plaintiff alleges numerous acts and omissions on part of the defendant that a reasonable person would not deem as proper conduct for an attorney; actions of an attorney acting properly would not have led to an injury; the plaintiff's complaint is sufficient, per Ohio Rules of Civil Procedure Rule 8, to support a claim of legal malpractice.
3. The trial court erred in deeming that plaintiff failed to provide facts regarding defendant's breach of duty and that plaintiff stated no allegations that the defendant's breach caused plaintiff's injury; plaintiff alleged numerous acts and omissions on part of the defendant that led to an unlawful imprisonment; imprisonment itself is a clear, definite, specific and indisputable injury; plaintiff's complaint is sufficient, per Ohio Rules of Civil Procedure Rule 8, to support a claim of willful negligence.
4. The trial court erred in ruling that plaintiff has alleged no set of facts that would entitle him to relief particularly in light of defendant having in no way plead that the case falls within one of the limited exceptions to the general rule requiring mere notice. Plaintiff was only required to put defendant on notice of claims and not to plead with specificity.
5. The trial court erred in not giving parties any notice of its treatment of the defendant's Rule 12(C) motion for judgment on the pleadings as essentially a conversion of a Rule 12(B)(6) motion to a Rule 56 summary judgment motion; defendant's designation of its motion as a Rule 12(C) is clearly a misnomer in light of the defendant having introduced exhibits from outside the pleadings as well as alleging material facts that contradict facts alleged by the plaintiff.
6. The court erred in not providing the judge on record, Judge Zmuda, for its May 15, 2008 pre-trial discovery hearing but instead, and absent good cause shown, providing a visiting judge, Judge Yarbrough, and likewise erred, with similar adverse effect, in continuing a status hearing scheduled for July 24, 2008 ; as such, the ability of the plaintiff to address discovery issues was highly prejudiced in light of the fact that a motion to dismiss filed by defendant had yet to be ruled upon and notwithstanding an obvious discrepancy about the naming and the very nature of the defendant's motion otherwise, by all appearances, in practice, a Rule 12(B)(6) turned Rule 56 motion and not a Rule Rule12(C).
7. The court erred in that it had no authority to rule on [an unstated] 42 §1983 federal claim.

FILED
LUCAS COUNTY

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COMMON PLEAS COURT
BERNIE GUILTER
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF LUCAS COUNTY, OHIO

Jeffrey L. Clemens,

*

Case No. CI-07-4650

Plaintiff,

*

Judge Gene A. Zmuda

vs.

*

OPINION AND JUDGMENT ENTRY

David A. Katz, et al.,

*

Defendants.

*

This case comes before the Court on defendant Jane Randall's ("defendant") Motion for Judgment on the Pleadings.

Plaintiff Jeffrey L. Clemens, *pro se*, ("plaintiff") filed opposition to defendant's motion for judgment on the pleadings and defendant filed a reply brief in support of her motion.

Defendant moves the Court for judgment on the pleadings with respect to any claims asserted by plaintiff in his complaint as plaintiff has alleged no set of facts that would entitle him to relief. Defendant contends that plaintiff's assertions in his complaint are unsupported conclusions that are not sufficient to withstand defendant's motion. Defendant argues that even though plaintiff is a *pro-se* litigant, plaintiff is not accorded greater rights than any other litigant and is still required to set forth facts to support an action against her. In regards to plaintiff's legal malpractice claim, defendant asserts that plaintiff has pled no facts to support his conclusion that defendant breach any specific standard of care or that he was damaged as a result of defendant's

conduct. Even if plaintiff does set forth sufficient facts, defendant argues that plaintiff's legal malpractice claim is time barred as a matter of law. Defendant also argues that plaintiff has failed to state what constitutional rights were violated or the facts to support his claim for conspiracy to commit false imprisonment. Finally, defendant asserts that plaintiff's claim for willful infliction of emotional distress must be dismissed as plaintiff has failed to establish that his injuries were both serious and reasonably foreseeable or that defendant's conduct was so extreme and outrageous as to go beyond the bounds of decency or considered intolerable to a civilized community. Defendant asks the Court to grant her motion as plaintiff's complaint consists of 35 pages of nonsensical narrative of a nationwide conspiracy that fails to set forth any viable cause of action against her.

Plaintiff asserts that defendant's Rule 12(C) motion fails on its face for it does not in any way establish that the plaintiff's complaint failed to provide the defendant with adequate notice of his claims. Plaintiff argues that his complaint is sufficient and meets the "short and plain," "substantial justice," and "simple, concise and direct" pleading requirements as set forth by Ohio Civil Rule 8. Plaintiff also argues that his legal malpractice claim is not time barred as the discovery rule applies in this case. Plaintiff contends that there are numerous issues of material fact that require, for their fair and rightful resolution, a period of discovery as well as the conduct of a trial by jury. Finally, plaintiff asserts that defendant's motion, by its unsubstantiated attacks on the character and integrity of the plaintiff, is diversionary and meant to delay the proceedings and deprive plaintiff of his day in Court. Therefore, plaintiff asks the Court to deny defendant's motion and allow plaintiff to proceed on the merits of his case.

Plaintiff filed his complaint on July 2, 2007 asserting claims against defendant for conspiracy to commit false imprisonment, willful infliction of emotional distress, willful negligence, conspiracy to violate the constitutional rights of the plaintiff, and professional malpractice.

On February 7, 2006, pursuant to a written plea agreement with the United States Attorney's Office for the Central District of California, plaintiff pled guilty to one count of mailing threatening communications to a United States District Court Judge in violation of 18 U.S.C. §876. (U.S.D.C. Docket 2:05-CR-00548-SJO, docket entry 82, attached as Appendix A to Defendant Jane Randall's Motion for Judgment on the Pleadings¹). On the same day, plaintiff was sentenced to eight months imprisonment to be followed by three years of supervised release. (U.S.D.C. Docket 2:05-CR-00548-SJO, docket entry 82, attached as Appendix A to Defendant Jane Randall's Motion for Judgment on the Pleadings). On or about April 17, 2006, Judge David A. Katz, of the United States District Court for the Northern District of Ohio, Western Division, accepted a transfer of jurisdiction over plaintiff's supervised release. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 2, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). Soon after returning to Ohio for his supervised release, plaintiff violated the terms of his release. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 3, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings).

¹This Court takes judicial notice of the United States District Court Docket Summaries for cases 2:05-CR-00548-SJO and 3:06-CR-00175-JZ-1 attached to defendant Jane Randall's motion for judgment on the pleadings as Appendix A and Appendix B, respectively. The Court only takes judicial notice of the U.S.D.C. Docket Summaries for setting forth the facts and proceedings of this case.

On August 11, 2006, defendant Jane Randall was appointed by the federal court to defend plaintiff in relation to the probation violation in Case No. 3:06-CR-00175-01. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entries 2-3, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). On August 22, 2006, U.S. District Court Judge David A. Katz found plaintiff had violated the terms of his supervised release. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 5, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). Judge Katz amended the terms of his release and ordered that plaintiff was prohibited from any communication with law enforcement or governmental authorities, extended plaintiff's home confinement for six months from August 28, 2006, continued plaintiff's mental health treatment, prohibited plaintiff from traveling to the state of Massachusetts, and ordered all previous terms to remain in effect. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 6, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings).

Defendant, on plaintiff's behalf, filed a motion for leave to appeal the August 22, 2006 Court Order and the Notice of Appeal was filed on August 28, 2006. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entries 7 and 12, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). However, a notice of withdrawal of notice of appeal was filed on August 30, 2006 by defendant on plaintiff's behalf. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 14, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings).

On August 29, 2006, plaintiff appeared before United States District Court Magistrate Judge Vernelis K. Armstrong regarding a second supervised release probation violation.

(U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 12, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). Plaintiff waived preliminary hearing and probable cause was established with a final hearing regarding revocation of plaintiff's supervised release scheduled for September 5, 2006 before the Honorable David A. Katz. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 12, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). On September 5, 2006, plaintiff admitted to the violation and Judge Katz revoked plaintiff's supervised release and directed plaintiff to the Federal Medical Facility for evaluation with a further hearing to be scheduled. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 15, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings). On October 5, 2006, a consent motion to substitute attorney David Klucas for Jane Randall to represent plaintiff was filed and accepted by the Court. (U.S.D.C. Docket 3:06-CR-00175-JZ-1, docket entry 20, attached as Appendix B to Defendant Jane Randall's Motion for Judgment on the Pleadings).

Ohio Civil Rule 12(C) provides that "after the pleadings are closed but within such times as not to delay the trial, any party may move for judgment on the pleadings." Civ. R. 12(C).

The Supreme Court of Ohio has established the standard for evaluating a motion for judgment on the pleadings pursuant to Civ.R. 12(C). The non-moving party is:

* * * entitled to have all the material allegations in the complaint, with all reasonable inferences therefrom, construed in her favor as true. * * * Civ.R. 12(C) * * * presents only questions of law, and determination of the motion for judgment on the pleadings is restricted solely to the allegations in the pleadings. *Peterson v. Teodosio* (1973), 34 Ohio St.2d 161, 165-166. (Citations omitted).

Plaintiff provides numerous facts in his complaint to support the claims asserted against defendant Jane Randall. Plaintiff's allegations against defendant are as follows:

"48. That on May 27, 2005 Jane Randall needlessly if not maliciously filed a motion for a continuance of a bond review hearing scheduled for the [then] following Tuesday, May 31, 2005 until June 10, 2005; Randall never informed Clemens of the continuance either then or since then; in fact, Clemens [who, by his terms of supervised release, is restricted from the Internet and, in turn, Pacer, online court document access service] only discovered that Randall had made such motion as of December 2006 through his brother, Jonathan, while Clemens was otherwise incarcerated and held in Chicago, Illinois [as explained later];

* * *

57. That Jane Randall's May 27, 2005 motion for continuance of a bond review hearing [effectively, a cancellation of such hearing] greatly undermined Clemens' chances for pre-trial release especially with regards to release prior to a grand jury indictment [June 8, 2005] which, by all indications, was sought through testimony of Ingerd Sotelo and only her testimony;

* * *

61. That Jane Randall [working "behind the scenes"] did not submit her billing to the court [for services to Clemens in May and June 2005] until December 2005;

62. That, by all appearances, Randall played some part in the assignment of Charlick to the defense of Clemens or, at least, those who selected Randall for Clemens' defense [say, for instance, Vernelis Armstrong] had a role in selecting Charlick as well for she, at one point, in June 2005, offered to Clemens' parents to help find a lawyer for him in Los Angeles;

* * *

95. That on several occasion in May and June 2005 Jane Randall told Clemens' parents that Clemens, if diagnosed with a mental disorder, will receive treatment in Los Angeles;

96. That Clemens' parents, in June 2005, protested Randall's insinuations about Clemens' mental health arguing that she was

pre-judging Clemens and that they did not believe Clemens to have any kind of mental disorder;

97. That in early June 2005, in an attempt by Clemens' brother to speak with her on behalf of his defense, Randall rudely hung up on him;

* * *

121. That on August 22, 2006 Clemens [with his parents] met with Russell [however, she was over fifteen minutes late]. She immediately commenced a discussion about Clemens having a so-called mental disorder, that he was "bipolar"; a tense and disturbing discussion followed and did not end until Randall excused herself saying, "I have a meeting with the judge." Clemens asked for any paperwork, meaning, violation report, etc. However, Randall responded, "Later. I'll give it to you later. I have a meeting with the judge." And she scurried off. Clemens and his parents followed her to Judge Katz' chambers. Randall said very little on the way and, for the most part, gave no indication as for what the meeting was about;

122. That at about 10 a.m. on August 22, 2006, after about a ten-minute "meeting", Randall stepped out of Katz' chambers and led Clemens to the Katz' courtroom, saying nothing of what was discussed in the meeting;

123. That Clemens entered the courtroom of Judge Katz and sat down, as instructed by Randall, at a certain desk with a microphone; Randall herself sat down and slid some papers over to Clemens. As well, she placed a copy of the July 28, 2006 Greenawalt letter beneath the microphone. At that moment, before Clemens was able to read the papers to which Randall placed in front of him, Judge Katz entered and began speaking;

* * *

125. That, as such, Clemens did not read past the first paragraph of the violation report before giving his full attention to the court; in fact, it was not until after the hearing that Clemens noticed a summons beneath the violation report that Randall placed in front of him at the start of the hearing; it was a summons to appear before Judge Armstrong;

126. That at some point in the August 22, 2005 hearing Judge Katz asked, "Do we have the letter here?" Clemens began to speak and reached for the letter beneath the microphone, "Yeah, right

[here]" However, Randall interrupted and said, "May I have a minute with my client."

127. That Clemens and Randall had a very brief discussion wherein Clemens said that the letter sitting near the microphone was the letter Clemens sent to Greenawalt; upon continuing the hearing, Randall said, "We stipulate as for the letter"; moments later, Judge Katz "found" Clemens in violation and imposed a sentence;

128. That as a result of such "violation", travel to Massachusetts was denied, six months home confinement was imposed, Clemens was ordered not to have any direct contact with law enforcement, and was ordered to so-call transfer treatment from Firelands to Court Diagnostic, all without objection from Randall;

* * *

132. That on August 22, 2006 Clemens also met with Randall in her office. Upon entering her office, and without saying anything whatsoever, Randall picked up her phone and began speaking. She had called Lt. Jonh Rooney of the Scituate Police Department and said that she was getting permission from Clemens for her to handle the present issue of a block on his license [due to three outstanding warrants]. Randall was speaking to his voice mail and without notice turned to Clemens and told him to say that it was all right for her to handle the license situation. Clemens spoke briefly if not awkwardly. After hanging up, Randall merely said, "I will see what I can do to get your license." However, she excused herself as being busy and urged Clemens and his parents to leave. Clemens father made some reference to the Katz hearing and Randall said, "You're not helping much." The meeting, strange as it was, quickly ended with no discussion whatsoever about the hearing."

133. That for three days in a row following the August 22, 2006 hearing with Katz Clemens called Randall urging her to file a notice of appeal. Clemens received no response. Finally, on Saturday, August 26, 2006, Clemens called Randall at her home. However, Randall responded, "There's no emergency. *Don't* call me at home." Randall then quickly and rudely hung up precluding any discussion whatsoever.

* * *

136. That following Granberry's visit to his house, Clemens reached Randall by phone and a bothersome conversation ensued. Randall made repeated insinuations that Clemens was "mental",

that he was "a walking time bomb", that Katz' order "was for his [Clemens'] protection", and that Clemens would not get release pending appeal. Nonetheless, Randall agreed to file a notice of appeal;

* * *

140. That on the afternoon of August 29, 2006 Jane Randall visited Clemens in a holding cell shortly before the start of a hearing before Judge Armstrong, presumably an Initial Appearance for an apparent new violation proceeding for "cutting ankle monitor". Randall's first words to Clemens were, "The court asked me to come here." Within moments, Randall urged Clemens to withdraw his notice of appeal, saying that, "The prosecution will not pursue an escape charge if you withdraw your appeal" followed by a statement, to the effect, "Judge Katz is not vindictive." Convinced that he otherwise faced an escape charge, Clemens agreed to withdraw his appeal. Randall then provided a piece of paper and a pen and proceeded to dictate every single word of a letter to the court which, once completed and signed, Randall quickly excused herself and Clemens was shortly thereafter escorted to Judge Armstrong's courtroom where he was shown a so-called violation report. Clemens quickly read the report which otherwise merely indicated that an ankle bracelet was cut. Clemens agreed to waive probable cause. The court informed Randall that it would consider conditions for release. However, Randall did not ever present such conditions to the court nor did she visit Clemens while incarcerated for the next week awaiting a hearing before Judge Katz. Meanwhile, a supplemental violation report was issued. However, Clemens never received a copy either from the probation office [Granberry] or his attorney [Randall];

141. That on September 5, 2006 Clemens, under marshal escort, was taken to the courtroom of Judge Katz for an apparent hearing. Since Randall never informed Clemens of the specific nature of the hearing nor what it involved, he had little sense of what the hearing was about other than "a revocation hearing". A few minutes before the hearing, Randall gave Clemens a copy of a supplemental violation report. Clemens quickly reviewed it just prior to Katz entering. As such, Clemens had no private discussion whatsoever with Randall over the issues involved in the report. To the shock of Clemens, Katz ordered Clemens to Rochester, Minnesota for a psychiatric evaluation. Furthermore, Randall made a so-called admission on behalf of Clemens when, in response of Katz'

question, "Ms. Randall, to the best of your knowledge, after discussion with your client, is that fairly representative of the facts?", Randall responded, "He does not contest the allegation." However, Katz had merely referred to the cutting of the bracelet whereas the allegation was, in fact, that of non-compliance with a home confinement order that did not specify electronic monitoring thereby representing two entirely different "allegations". As Clemens was not presented a copy of a supplemental report as Local Criminal Rule 32.1.1 requires [disclosure at least 48 hours prior to revocation hearing even though the U.S. Attorney received its copy 5 days prior] he was not alerted to the subtle differences between the violation reports otherwise significantly different and calling for a probable cause hearing which, in fact, did not take place before Katz issued - literally out of the blue - an order directing Clemens to a federal medical facility.

142. That on September 7, 2006 Clemens wrote a letter to Randall asking her to withdraw as counsel and to immediately inform the court of such withdrawal.

143. That despite his letter to her, Randall did not officially withdraw as counsel until on or about October 5, 2006;" (Plaintiff's Complaint, ¶¶48, 57, 61, 62, 95, 96, 97, 121, 122, 123, 125, 126, 127, 128, 132, 133, 136, 140, 141, 142, and 143).

Based upon these facts, plaintiff asserted claims for conspiracy to commit false imprisonment, willful infliction of emotional distress, willful negligence, conspiracy to violate the constitutional rights of the plaintiff, and professional malpractice. However, even with all reasonable inferences construed in plaintiff's favor, plaintiff still fails to set forth facts sufficient to maintain the claims asserted in his complaint against defendant.

Plaintiff's false imprisonment claim requires two elements to be asserted in his complaint. The requisite elements for false imprisonment are (1) a detention of the person, and (2) an unlawful imprisonment. *Faulkner v. Faulkner* (Dist. App. 6th, Case No. S-99-008), 2000 Ohio App. LEXIS 19, *2. "False imprisonment *per se* is not concerned with good or bad faith, malicious motive or want of probable cause on the part of the prosecuting witness, or the officer

causing the imprisonment. If the imprisonment was lawful, it is not the less lawful that any or all of the foregoing elements existed." *Id.* at *3.

In this case, even though plaintiff has asserted that he was imprisoned, plaintiff has failed to assert that his imprisonment was unlawful. Plaintiff only alleges in his complaint that defendant's continuance of his bond review hearing was made "needlessly if not maliciously" and "greatly undermined plaintiff's chances for pre-trial release * * * prior to a grand jury indictment." (Plaintiff's Complaint, ¶¶48 and 57). However, plaintiff was being held for a probation violation and not arrested on new charges that would require a grand jury indictment. Therefore, the Court finds that defendant is entitled to judgment as a matter of law on plaintiff's false imprisonment claim asserted against her in plaintiff's complaint.

Next, plaintiff asserts a claim for willful infliction of emotional distress. "A claim for intentional infliction of emotional distress requires proof of four elements:

'* * * 1) that the actor either intended to cause emotional distress or knew or should have known that actions taken would result in serious emotional distress to the plaintiff; 2) that the actor's conduct was so extreme and outrageous as to go beyond all possible bounds of decency and was such that it can be considered as utterly intolerable in a civilized community, Restatement of Torts 2d (1965) 73, Section 46, comment d; 3) that the actor's actions were the proximate cause of plaintiff's psychic injury; and 4) that the mental anguish suffered by plaintiff is serious and of a nature that no reasonable man could be expected to endure it, Restatement of Torts 2d 77, Section 46, comment j.' *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 34." *Ashcroft v. Mt. Sinai Medical Center* (1990), 68 Ohio App.3d 359, paragraph 5 of the syllabus by the Court.

Plaintiff fails to assert any facts in his complaint that would support a claim for infliction of emotional distress. Therefore, the Court finds that defendant is entitled to judgment as a matter of law on plaintiff's willful infliction of emotional distress.

The same is true of plaintiff's claim for willful negligence. Plaintiff sets forth no facts or allegations sufficient to support a claim for willful negligence. Not only does plaintiff fail to provide facts regarding defendant's breach of her duty, but there are also no allegations that defendant's breach caused plaintiff's injury and/or damage. Therefore, the Court finds that plaintiff's claim for willful negligence also fails and defendant is entitled to judgment as a matter of law.

Plaintiff also asserts a claim for violation of constitutional rights against defendant. In order to establish a constitutional rights violation, plaintiff is required to assert two elements in his complaint. The two elements required are: (1) the conduct must be committed by a person acting under the color of state law, and (2) the conduct must deprive the plaintiff of rights, privileges, or immunities secured by the Constitution or the laws of the United States. *Gomez v. Toledo* (1980), 446 U.S. 635, 640. "42 U.S.C.S. § 1983 provides a cause of action for the deprivation of any rights, privileges, or immunities secured by the United States Constitution and laws by any person acting under color of any statute, ordinance, regulation, custom, or usage, of any state or territory." 42 U.S.C.S. § 1983. There is no indication by plaintiff whether his constitutional rights violation claim is asserted under 42 U.S.C.S. § 1983 or another statute. Regardless, plaintiff's complaint is void of any facts identifying the constitutional right that was violated or the conduct that deprived plaintiff of his constitutional rights. Therefore, the Court finds defendant is entitled to judgment as a matter of law on plaintiff's claim for violation of his constitutional rights.

Finally, plaintiff asserts a claim of professional malpractice against defendant.

"To establish a cause of action for legal malpractice based on negligent representation, a plaintiff must show (1) that the attorney owed a duty or obligation to the plaintiff, (2) that there was a breach of that duty or obligation and that the attorney failed to conform to the standard required by law, and (3) that there is a causal connection between the conduct complained of and the resulting damage or loss." *Vahilla v. Hall* (1997), 77 Ohio St.3d 421, syllabus by the Court.

Clearly, plaintiff sets forth facts in his complaint that defendant represented him as his legal counsel at his probation violation hearings before the Honorable David A. Katz of the United States District Court for the Northern District of Ohio, Western Division. Nevertheless, plaintiff completely fails to allege facts that defendant breached her duty or to show a causal connection between the conduct and any resulting loss. Plaintiff alleges that defendant never kept him informed of the status of his cases before Judge Katz. Plaintiff also infers that defendant was rude not only to him but his family as well and that he was not given the opportunity to review documents that were placed before him prior to the hearings being held. Even with all the inferences construed in plaintiff's favor, plaintiff still fails to allege facts sufficient to establish a claim for professional malpractice. Consequently, the Court finds that plaintiff's professional malpractice claim fails and defendant is entitled to judgment as a matter of law.

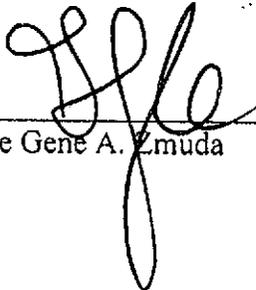
Therefore, after carefully reviewing plaintiff's complaint, arguments of the parties, Civ. R. 12(C), and all applicable statutes and case law, the Court finds defendant's motion for judgment on the pleadings well-taken and GRANTED. All claims asserted by plaintiff against defendant Jane Randall are hereby dismissed.

The ruling herein is a full and complete adjudication of all claims incipient in plaintiff's cause of action as they relate to defendant Jane Randall and a complete adjudication of all

genuine issues, merits, and matters in controversy between the parties. It appears there is no just cause for delay, and that, pursuant to Civ.R. 54, final judgment should be entered for defendant Jane Randall in accordance with such determination.

Costs taxed to plaintiff.

7/30/08
Date


Judge Gene A. Zmuda