

IN THE SUPREME COURT OF OHIO  
CASE NO. \_\_\_\_\_

12-0556

JOHN DOE	:	ON APPEAL FROM THE CLINTON
	:	COUNTY COURT OF APPEALS
Plaintiff-Appellant	:	TWELFTH APPELLATE DISTRICT
vs.	:	
BRANDON BRUNER	:	COURT OF APPEALS
	:	CASE NO. CA2011-07-013
Defendant-Appellee	:	

MEMORANDUM IN SUPPORT OF JURISDICTION  
OF APPELLANT

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**FILED**  
 APR 04 2012  
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**EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC  
OR GREAT GENERAL INTEREST**

The ruling from the Court of Appeals below is the first from an Ohio court of appeals which attempts to identify and apply the factors for determining when a plaintiff in a civil case may use a pseudonym, such as John or Jane Doe, to protect his or her identity. The majority opinion laments, "Although the practice of proceeding under a pseudonym is well established in Ohio, neither the Ohio Supreme Court nor any Ohio appellate court has yet addressed a challenge to this practice." (Opinion at ¶4). The concurring opinion observes, "[T]he Ohio Civil Rules and Ohio case law provide virtually no guidance on the proper use of pseudonyms." (Opinion at ¶17).

Due to the lack of guidance in Ohio jurisprudence on this issue, the majority proceeds to analyze a split in federal circuit court rulings on this issue, choosing and applying the methodology favored by the U.S. Sixth Circuit. It holds that a party can proceed under a pseudonym where a "plaintiff's privacy interest substantially outweighs the presumption of open judicial proceedings." (Opinion at ¶6). It offers its list of primary considerations: 1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; 2) whether prosecution of the suit will compel the plaintiffs to disclose information of the utmost intimacy; 3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and 4) whether the plaintiffs are children. In the present case, the majority opines that disclosing facts surrounding a sexual assault will likely include information of utmost intimacy, but "this factor alone is not enough to allow Doe to

proceed pseudonymously." (Opinion at ¶10). The concurring opinion takes issue with that statement and the application of the factors by the majority: "I find that the enumerated factors are not inclusive, but are without limitation. I also find that it is not the quantity of the factors presented, but the quality of the factors that should be weighed. For example, considerations of whether prosecution of a suit would compel the plaintiff to disclose information of the utmost intimacy may be in and of itself more significant than whether threats of retaliation have not been made." (Opinion at ¶18).

Many cases have been presented to this Court under a pseudonym. *See Doe v. Shaffer* (2000), 90 Ohio St. 3d 388, 389 n.1 (observing without further comment that the name of the adult victim of AIDS "has been changed"); *Doe v. First United Methodist Church* (1994), 68 Ohio St. 3d 531 (adult plaintiff alleging claims of sexual abuse as a minor); *In Re Application of John Doe II* (2002), 96 Ohio St. 3d 158 (denial of bi-polar applicant to take Ohio Bar Examination); *Doe v. Archdiocese of Cincinnati* (2006); 109 Ohio St. 3d 491 (adult plaintiff alleging claims of sexual abuse as a minor); *Doe v. Archdiocese of Cincinnati* (2008); 116 Ohio St. 3d 538 (adult plaintiff alleging claims following a sexual relationship she was forced into as a minor); *Doe v. Marlinton Local School District* (2009), 122 Ohio St. 3d. 12, n.1 (permitting the individual plaintiffs and alleged perpetrator defendant to be identified by fictitious names to protect their privacy in a civil matter involving a claim of sexual assault). The United States Supreme Court has also implicitly endorsed the use of pseudonyms to protect a

plaintiff's privacy. *See e.g., Roe v. Wade* (1973), 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed.2d 147 (abortion); *Doe v. Bolton* (1973), 410 U.S. 179, 93 S. Ct. 739, 35 L. Ed.2d 201 (abortion); *Poe v. Ullman* (1961), 367 U.S. 497, 81 S. Ct. 1752, 6 L. Ed.2d 989 (birth control).

Yet this Court has never enunciated the factors for Ohio courts to consider in determining whether to permit a plaintiff to proceed under a pseudonym. The Court of Appeals in this case has indicated that the courts of Ohio are in need of that guidance from this Court.

#### **STATEMENT OF THE CASE AND FACTS**

Plaintiff/Appellant, John Doe ("Doe"), filed this lawsuit August 31, 2010 in Clinton County Common Pleas Court. In the first paragraph of his Complaint, Doe stated: "The name of the Plaintiff in the caption of this Complaint is fictional and is being used to protect the identity of a sexual abuse victim, pursuant to Ohio public policy. The identity of the Plaintiff will be disclosed to Defendant and the Court confidentially."

Plaintiff went on to allege that he is a former student at Wilmington College and that Defendant, Brandon Bruner ("Bruner"), was a fellow student when Bruner sexually assaulted and molested Plaintiff on several occasions in September and October 2009 on campus. Following Plaintiff's report of the sexual assaults, Bruner was ordered to refrain from any contact with Plaintiff. Bruner violated that order and

was convicted in Wilmington Municipal Court of telephone harassment. Doe then asserted various civil claims arising out of the assault.

Bruner did not challenge Doe's use of a pseudonym in this case. Rather, the trial court, *sua sponte*, requested briefing from Doe as to why he should be permitted to proceed under a pseudonym. Following the briefing, the trial court wrote a five sentence Entry, stating in pertinent part: "After review of the full record, the Court notes Plaintiff had no issue identifying the name of the Defendant in court pleadings. To now claim Plaintiff's interest in keeping his own identity secret is superior to Defendant's interest in that regard rings hollow to this court."

Doe appealed and the Twelfth District Court of Appeals affirmed, albeit with a much more sophisticated analysis.

#### **ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW**

**Proposition of Law No. 1:** Ohio courts recognize an exception, in limited matters of a sensitive and highly personal nature, to the requirement of Civ. R. 10(A) that a plaintiff must proceed in civil litigation under his or her own name.

**Proposition of Law No. 2:** There is substantial public interest in ensuring that plaintiffs who would suffer extreme distress or danger by disclosing their names are protected throughout the judicial process.

Civ. R. 10(A) provides in part: "In the complaint the title of the action shall include the names and addresses of all parties[.]" The concurring opinion from the Court of Appeals in this case observed, "The language of Civ. R. 10(A) neither grants

nor denies one from using a pseudonym in Ohio pleadings and I have found no Ohio case interpreting Civ. R. 10(A) as such.”(Opinion at ¶14).

Federal Rule of Civil Procedure 10(a) also requires that “the complaint must name all the parties.” Yet federal courts have long held that plaintiffs may proceed pseudonymously. *See Doe v. Porter*, 370 F.3d 558, 560-561 (6<sup>th</sup> Cir. 2004) (upholding lower court’s grant of protective order allowing the use of pseudonyms in challenge to religious instruction in schools); *City of San Diego v. Roe*, 543 U.S. 77, 125 S.Ct. 521 (2004) (police officer terminated from his job because of sexually explicit videotapes he had made was permitted to file pseudonymously).

“Courts have increasingly recognized an exception to this requirement [of naming the plaintiff] in limited matters of a sensitive and highly personal nature.” *Rowe v. Burton*, 884 F.Supp.2d 1372, 1385-86 (D. Alaska 1994). ““Where the issues involved are matters of a sensitive and highly personal nature . . . the normal practice of disclosing the parties’ identities ‘yields to a policy of protecting privacy in a very private matter.’” *Southern Methodist Univ. Ass’n of Women Law Students v. Wynne & Jaffee*, 599 F.2d 707, 712-13 (5<sup>th</sup> Cir. 1979), *quoting Doe v. Deschamps*, 64 F.R.D. 652, 653 (D. Mont. 1974). “Courts have long recognized... that the circumstances of a case, particularly where litigants may suffer extreme distress or danger from their participation in the lawsuit, may require that plaintiffs proceed without revealing their true names. Courts have found that plaintiffs could proceed anonymously because they feared that revealing their true identities would lead to physical violence,

deportation, arrest in their home countries and retaliation against the plaintiffs' families for bringing suit." *Lozano v. City of Hazleton*, 496 F.Supp.2d 477, 505-507 (M.D. Pa., 2007). "There is substantial public interest in ensuring that cases like the plaintiff's are adjudicated and the rights of mental illness sufferers are represented fairly and without the risk of stigmatization. However, this goal cannot be achieved if litigants suffering from mental illness are chilled from ever reaching the courthouse steps for fear of repercussions that would ensue if their condition was made public. Although any litigant runs the risk of public embarrassment by bringing their case and revealing sensitive facts in a public courtroom, the situation here is vastly different... plaintiff is faced with circumstances that society may not yet understand or accept and his condition is directly tied to the issues before the court." *Doe v. Hartford Life and Acc. Ins. Co.*, 237 FRD 545, 550-551 (D. N.J., 2006).

"The judicial use of Doe plaintiffs to protect legitimate privacy rights has gained wide currency, particularly given the rapidity and ubiquity of disclosures over the World Wide Web." *Starbucks Corp. v. Superior Court* (2008), 168 Cal. App. 4th 1436, 86 Cal. Rptr. 3<sup>rd</sup> 482. *See also*, Jayne S. Ressler, *Privacy, Plaintiffs and Pseudonyms: The Anonymous Doe Plaintiff in the Information Age*, 53 Kan. L. Rev. 195 (2005)(suggesting that, in the age of internet search engines and electronic access to court dockets, it may be in the public interest to permit more pseudonymous litigation); J. Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants be Permitted to Keep Their Identities Confidential*, 37 Hastings L.J. 1 (1985)(collecting cases); C. Rice, *Meet John Doe: It is Time*

*for Federal Civil Procedure to Recognize John Doe Parties*, 57 U. Pitt. L. Rev. 883 (1996)(collecting cases).

Many plaintiffs seeking anonymity are victims of sexual abuse, often suffered as children and disclosed as adults. Given that the Ohio legislature in 2006 extended the statute of limitations for childhood sexual abuse victims to 12 years from the age of majority, R.C. 2305.111, Ohio courts will face more such suits in coming years. Permitting plaintiffs to use pseudonyms in childhood sex abuse cases serves the compelling public interest of encouraging the public identification of child perpetrators.

A small percentage of victims ever report their abuse. While approximately one in every three to four women and one in five to six men are sexually abused as children, only about 10% report their abuse to the authorities. Mary Gail Frawley-O'Dea, *Perversion of Power: Sexual Abuse in the Catholic Church* 6-7 (Vanderbilt University Press 2007); *What Do U.S. Adults Think About Child Sexual Abuse? Measures of Knowledge and Attitudes Among Six States*, Stop It Now!, 7 (2010), [www.stopitnow.org/rdd\\_survey\\_report](http://www.stopitnow.org/rdd_survey_report) ("Nearly 30% of women and 14% of men reported on the survey that they had been sexually abused as children. The percentage of adults in our survey who experienced sexual abuse in childhood is consistent with prevalence rates established in other research with adults."); J. Briere and D.M. Elliot, *Prevalence and Psychological Sequence of Self-Reported Childhood Physical and Sexual Abuse in General Population*, 27 (10) Child Abuse & Neglect, 1205-1222 (2003)(finding that as

many as one in three girls and one in seven boys will be sexually abused at some point in their childhood); R.F. Hanson, et al., *Factors Related to the Reporting of Childhood Sexual Assault*, 23 *Child Abuse & Neglect* 559-569 (1999)(noting that in the U.S., only 12% of child sexual abuse is reported to authorities).

To stop child sexual abuse, perpetrators must be identified and prosecuted, which is only achieved by encouraging victims to come forward. Because child sex abuse inflicts lifelong harm, Laura P. Chen, B.S., et al., *Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders*, 85 (7) *Mayo Clin. Proc.* 618 (July 2010)(concluding that a history of sexual abuse is associated with increased risk of lifetime diagnosis of multiple psychiatric disorders), victims are routinely psychologically disabled by the abuse and need to be protected from public embarrassment and shame even into adulthood. Many victims will not pursue their claims or report child sexual abuse to authorities if they fear public embarrassment resulting from disclosure of their identities.

Numerous studies establish the fact that it typically takes years and often decades for survivors of abuse to disclose their abuse to anyone, let alone the justice system. Thus, they face serious psychological disorders and need protection even as adults. *See, State v. Schnabel*, 952 A.2d 452, 462 (N.J. 2008) (observing that Child Sexual Abuse Accommodation Syndrome involves five behavior patterns that may be exhibited by a sexually abused child: secrecy, helplessness, entrapment and accommodation, delayed reporting, and recantation); Mic Hunter, *Abused Boys*, 59

(Ballantine Books, 1991) ("some of the effects of sexual abuse do not become apparent until the victim is an adult and a major life event, such as marriage or birth of a child, takes place. Therefore, a child who seemed unharmed by childhood abuse can develop crippling symptoms years later and can have a difficult time connecting his adulthood problems with his past.").

Ohio public policy strongly supports and defends courageous sexual abuse victims who come forward to hold their perpetrators accountable. *See* Evid. R. 404(A)(2)(limiting character evidence of victim of sexual abuse); Evid. R. 807 (out-of-court statement of childhood sexual abuse victim not hearsay); R.C. 2907.02(D)(limiting impeachment of rape victim).

On the other hand, the presumption of open courts is easily overcome. "The question of whether there is a constitutional right to abortion is of immense public interest, but the public did not suffer by not knowing the plaintiff's true name in *Roe v. Wade*." *Does I through XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1072, n. 15 (9<sup>th</sup> Cir. 2000). That is why the trial court's rationale in this case is bewildering. Apparently, the gist of its rationale is that the survivor alleging that he or she has been the victim of the most humiliating and egregious offenses and his or her alleged perpetrator must be treated equally; if the survivor chooses to name his or her perpetrator, then the survivor must also be willing to publicly disclose his or her own name. Such rationale is contrary to public policy and common law, and reveals a truly unfortunate lack of understanding of the overwhelming challenges which face sexual abuse victims who

finally muster the courage to come forward to prevent further atrocities. The trial court's approach would have a chilling effect on already-partially-incapacitated victims in seeking civil justice.

**Proposition of Law No. 3:** A plaintiff may proceed under a pseudonym where the plaintiff's privacy interest outweighs the presumption of open judicial proceedings.

**Proposition of Law No. 4:** In determining whether a plaintiff's privacy interest outweighs the presumption of open judicial proceedings, a court should consider the following non-exhaustive list of factors: a) the extent to which the identity of the litigant has previously been kept confidential; b) the reason upon which disclosure is feared or sought to be avoided; c) the chilling effect, if any, of disclosure and being publicly identified; d) the strength or need of the public to know the litigant's identity; e) whether the party seeking anonymity has an ulterior motive; f) whether either party is a public figure creating a strong public interest in knowing the identity of the litigant.

**Proposition of Law No. 5:** The court shall weigh the quality rather than the quantity of the factors.

**Proposition of Law No. 6:** Any one factor, standing alone, may justify use of a pseudonym if the factor is sufficiently compelling.

The majority opinion below adopted the U.S. Sixth Circuit's approach to determining when a plaintiff may proceed under a pseudonym, balancing privacy interests against open court proceedings. (Opinion at ¶6). "Several considerations determine whether a plaintiff's privacy interests substantially outweigh the

presumption of open judicial proceedings.” *Doe v. Porter*, 370 F.3d 558, 560 (6<sup>th</sup> Cir. 2004). Those considerations include:

- (1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity;
- (2) whether prosecution of the suit will compel the plaintiffs to disclose information “of the utmost intimacy”;
- (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and
- (4) whether the plaintiffs are children.

*Id.*, citing *Doe v. Stegall*, 653 F.2d 180, 186 (5<sup>th</sup> Cir. 1981). While Doe does not object to those factors as far as they go, Doe suggests that the concurring opinion recommends a more thorough and less archaic list of circumstances which better apply to today’s environment, such as: a) the extent to which the identity of the litigant has previously been kept confidential; b) the reason upon which disclosure is feared or sought to be avoided; c) the chilling effect, if any, of disclosure and being publicly identified; d) the strength or need of the public to know the litigant’s identity; e) whether the party seeking anonymity has an ulterior motive; f) whether either party is a public figure creating a strong public interest in knowing the identity of the litigant. (Opinion at ¶19). Doe encourages the Court to adopt those factors.

Furthermore, the concurring opinion wisely recognized that the weighing of the quality, not the quantity, of factors guides the proper determination of these issues, and that any one factor can be so strong as to unilaterally make the determination.

(Opinion at ¶18). Doe also requests that Court adopt those propositions of law as well.

**CONCLUSION**

Doe respectfully requests that the Supreme Court accept this appeal to guide lower courts in the determination of when and under what circumstances a plaintiff in a civil case may proceed under a pseudonym.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the foregoing Brief was served upon the following by regular U.S. mail this 7<sup>th</sup> day of April, 2012:

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IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLINTON COUNTY

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JOHN DOE, :  
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 - vs - : OPINION  
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 :  
 BRANDON BRUNER, :  
 :  
 Defendant-Appellee. :

CIVIL APPEAL FROM CLINTON COUNTY COURT OF COMMON PLEAS  
Case No. CVH2010-0689

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**POWELL, P.J.**

{¶ 1} Plaintiff-appellant, John Doe, appeals a decision of the Clinton County Court of Common Pleas denying his motion to proceed under a pseudonym.<sup>1</sup> For the reasons stated below, we affirm the trial court's decision.

{¶ 2} During the months of September and October 2009, Doe was allegedly sexually assaulted and molested by defendant-appellee, Brandon Bruner. Both parties were

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1. Pursuant to Loc.R. 6(A), we sua sponte remove this appeal from the accelerated calendar.

attending Wilmington College at the time and shortly after the alleged incident Doe obtained an order prohibiting Bruner from contacting him. Later, Bruner violated the order when he sent Doe a text message. On August 31, 2010 Doe filed the present action under a pseudonym, asserting Bruner committed sexual assault and battery and intentionally inflicted emotional distress. On April 19, 2011 the magistrate ordered Doe to file a brief regarding his right to proceed pseudonymously. Subsequently, the magistrate denied Doe's request to proceed under a pseudonym. The trial court affirmed the magistrate's decision. Doe now appeals, asserting one assignment of error:

**{¶ 3}** THE TRIAL COURT ERRED IN REQUIRING DOE TO PROCEED PUBLICLY IN HIS TRUE NAME, WHEN PUBLIC POLICY AND COMMON LAW SUPPORT THE RIGHT OF A SEXUAL ABUSE VICTIM TO PROCEED UNDER A PSEUDONYM.

**{¶ 4}** In his sole assignment of error, Doe argues that the trial court erred when it ordered him to proceed under his real name. Specifically, he claims that a sexual abuse victim's right to proceed under a pseudonym is supported by Ohio common law and public policy. Although the practice of proceeding under a pseudonym is well established in Ohio, neither the Ohio Supreme Court nor any Ohio appellate court has yet addressed a challenge to this practice. *See, e.g., Doe v. Shaffer*, 90 Ohio St.3d 388, 2000-Ohio-186 (Noting the plaintiff's name has been changed); *Doe v. George*, 12th Dist. No. CA2011-03-022, 2011-Ohio-6795 (Allowing but not commenting on use of pseudonyms for plaintiffs); *Doe v. Trumbull Cty. Children Servs. Bd.*, 11th Dist. No. 2004-T-0034, 2005-Ohio-2260 (Mother's name changed during malicious prosecution action against child services agency). However, the federal courts have developed a body of law regarding this issue. As discussed below, we find persuasive and chose to follow the Sixth Circuit's approach.

**{¶ 5}** Both the Ohio and Federal Rules of Civil Procedure require that every complaint list the names and addresses of all parties involved in the suit. Civ.R. 10(A) and

Fed.R.Civ.P. 10(A). Federal courts have reasoned that this rule demonstrates "the principle that judicial proceedings, civil as well as criminal, are to be conducted in public." *Doe v. Blue Cross & Blue Shield United of Wisconsin*, 112 F.3d 869, 872 (7th Cir.1997). "Identifying the parties to the proceeding is an important dimension of publicness." *Id.* The public has a "legitimate interest in knowing which disputes involving which parties are before the federal courts that are supported with tax payments and exist ultimately to serve the American public." *Doe v. Indiana Black Expo, Inc.*, 923 F.Supp. 137, 139 (S.D.Ind.1996). The identification of those involved in the suit also serves the opposing parties' interest. "Defendants have the right to know who their accusers are, as they may be subject to embarrassment or fundamental unfairness if they do not." *Plaintiff B v. Francis*, 631 F.3d 1310, 1315 (11th Cir.2011).

{¶ 6} Although there is a strong policy towards open judicial proceedings, parties have been permitted to proceed under a pseudonym in exceptional circumstances. All of the federal circuits weigh the anonymous party's privacy interest against the opposing party's interest in disclosure. In balancing these interests, the second, seventh, and ninth circuits consider both the public interest in disclosure and any prejudice to the opposing party. *E.g.*, *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2nd Cir.2008); *Doe v. City of Chicago*, 360 F.3d 667, 668 (7th Cir.2004); *Doe I Thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir.2000). Many of the remaining circuits, including the sixth circuit, only weigh the plaintiff's privacy interest against the presumption of open judicial proceedings. *E.g.*, *Doe v. Porter*, 370 F.3d 558, 560 (6th Cir.2004); *Doe v. Megless*, 654 F.3d 404, 408 (3rd Cir.2011); *Plaintiff B v. Francis*, 631 F.3d 1310, 1315-1316 (11th Cir.2011); *M.M. v. Zavaras*, 139 F.3d 798, 803 (10th Cir.1998). We chose to follow the latter approach and hold that a party can proceed under a pseudonym where a "plaintiff's privacy interest substantially outweighs the presumption of open judicial proceedings." *Porter* at 560.

{¶ 7} In balancing these concerns, the trial court "should carefully review *all* the circumstances of a given case." (Emphasis sic.) *Plaintiff B* at 1316 quoting *Doe v. Frank*, 951 F.2d 320, 323 (11th Cir.1992). Several federal circuits have enumerated sets of factors for trial courts to consider. While the sixth circuit's list of considerations are non-exhaustive, the primary concerns are: "(1) whether the plaintiffs seeking anonymity are suing to challenge governmental activity; (2) whether prosecution of the suit will compel the plaintiffs to disclose information 'of the utmost intimacy'; (3) whether the litigation compels plaintiffs to disclose an intention to violate the law, thereby risking criminal prosecution; and (4) whether the plaintiffs are children." *Porter* at 560, citing *Doe v. Stegall*, 653 F.2d 180, 185-186 (5th Cir.1981). Other factors sixth circuit trial courts have considered are whether threats of retaliation have been made against the plaintiff and the potential prejudice of the opposing party. See *Porter* at 360-36; *Doe v. Wolowitz*, E.D. Michigan No. 01-73907, 2002 WL 130614, \*2 (May 28, 2002).<sup>2</sup>

{¶ 8} Having determined to follow the sixth circuit's approach, we now apply this test to the facts of this case. We begin with the principle that a trial court's ruling regarding a party's request to proceed pseudonymously will not be overturned absent an abuse of discretion. *E.g.*, *Porter* at 560; *Megless* at 406; *Frank* at 323. See *Compston v. Automanage, Inc.*, 79 Ohio App.3d 359, 367 (12th Dist.1992) (Generally, a trial court's pretrial decisions are reviewed for an abuse of discretion). An abuse of discretion is more than mere error of law or of judgment; it implies an attitude that is unreasonable, unconscionable, or arbitrary. *State v. Adkins*, 144 Ohio App.3d 633, 644 (12th Dist.2001).

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2. *Compare Sealed Plaintiff* at 190 (Including additional factors for consideration such as: whether identification poses a risk of retaliatory physical or mental harm, whether identification presents other harms and likely severity of those harms, whether the defendant is prejudiced, whether the plaintiff's identity has thus far been kept confidential, whether the public interest's in litigation is furthered by requiring plaintiff to disclose his identity, whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant's identity, and whether there are any alternative mechanisms for protecting the confidentiality of the plaintiff).

An action is unreasonable where there is no sound reasoning process to support the judge's decision. *Hall v. Johnson*, 90 Ohio App.3d 451, 455 (1st Dist.1993).

{¶ 9} As mentioned above, the trial court denied Doe's request to proceed under a pseudonym. We agree with the trial court and find that Doe's privacy interests do not substantially outweigh the presumption of open judicial proceedings. Doe concedes and we agree that three of the four factors do not apply. Doe is not a child, the litigation will not compel him to disclose an intention to violate the law, and he is not challenging governmental activity. In fact, in cases where plaintiffs are challenging the actions of a private individual, courts have reasoned that this weighs towards disclosure because of the reputation and credibility concerns that a lawsuit implies for an individual defendant. See *Indiana Black Expo*, 923 F.Supp. 137, 141 ("Basic fairness requires that where a plaintiff makes such accusations publicly, he should stand behind those accusations and the defendants should be able to defend themselves"); *Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D. New York 1996). Moreover, Doe has not alleged he has suffered threats of retaliation for filing this suit.

{¶ 10} Doe argues in his brief that his identity should be kept confidential because he will be forced to disclose information that will be of the "utmost intimacy." Although, it is likely that disclosing facts surrounding the sexual assault will include information that falls in this category, this factor alone is not enough to allow Doe to proceed pseudonymously. In addressing similar arguments, a federal court prohibited a plaintiff from proceeding under a pseudonym despite the fact that the case involved allegations of sexual abuse. *Wolowitz*, E.D. Michigan No. 01-73907, 2002 WL 130614. The court reasoned that even though the sexual abuse charges likely included information of the "utmost privacy," this single factor was not so persuasive that it substantially outweighed the presumption of open judicial proceedings. *Id.* at \*2. Other courts have applied similar reasoning to claims regarding intimate disclosure. A New York court found that a sexual assault victim's privacy interests

were outweighed by the fact that the lawsuit was a civil suit for damages, the defendant had been publicly accused, and the public has a right of access to the courts. *Shakur* at 361. Further, a court denied the use of a pseudonym in a sexual harassment case where a plaintiff alleged she was infected with the HIV virus due to a sexual assault by her supervisor. *Doe v. Bell Atlantic Bus. Sys. Servs., Inc.*, 162 F.R.D. 418, 420 (D.Mass.1995).

{¶ 11} Thus, the trial court did not abuse its discretion in denying Doe's request to proceed under a pseudonym. Doe's assignment of error is overruled.

{¶ 12} Judgment affirmed.

YOUNG, J., concurs.

RINGLAND, J., concurs separately.

**RINGLAND, J., concurring separately.**

{¶ 13} I concur with the judgment of the majority. However, I write separately because I do not entirely agree with the rationale the majority propounded in affirming the trial court's decision.

{¶ 14} Initially, a review of the record indicates that following a hearing on the matter the magistrate denied appellant's request to use a pseudonym to bring his suit based on Civ.R. 10(A). This was error. The language of Civ.R. 10(A) neither grants nor denies one from using pseudonyms in Ohio pleadings and I have found no Ohio case interpreting Civ.R. 10(A) as such.

{¶ 15} Furthermore, a review of the record also indicates that the trial court modified the magistrate's order denying appellant's request without holding a hearing by finding "[appellant] had no issue identifying the name of the Defendant in Court pleadings. To now claim [appellant's] interest in keeping his own identity secret is superior to Defendant's

interest in that regard rings hollow to this court." In reviewing the nature of the complaint, I find the trial court's criticism provides an insufficient explanation of its reasoning denying appellant's request. This matter arguably involves allegations of intimate details involving unwanted homosexual activity. Appellant argues that using his real name in bringing this suit would chill his efforts to obtain redress and ultimately deny him access to the courts. This would certainly be a factor worthy of granting appellant's request to use a pseudonym if no counter arguments were presented. While defendant is clearly named as party to this action, defendant would have his own recourse by way of a suit alleging defamation should this case be resolved in his favor. This would balance out any lack of fairness that the trial court may be alluding to in its decision.

{¶ 16} Nevertheless, I concur in judgment because no transcript of the hearing before the magistrate was filed in this case. Without a transcript, this court is unable to determine what evidence was presented regarding appellant's privacy interests against those favoring disclosure. In addition, without a transcript, this court is unable to determine what evidence was presented to the magistrate explaining the reasoning process behind the trial court's vague conclusion. As this court has consistently stated, without a transcript we have no choice but to presume the regularity of the trial court's proceedings. See *Cox v. Zimmerman*, 12th Dist. No. CA2011-03-022, 2012-Ohio-226, ¶ 19, citing *Geico Indemn. Co. v. Alausud*, 12th Dist. No. CA2010-11-315, 2011-Ohio-2599, ¶ 16. I would affirm the trial court's decision on this basis.

{¶ 17} That said, as noted previously, the Ohio Civil Rules and Ohio case law provide virtually no guidance on the proper use of pseudonyms. In turn, had a transcript been provided in this case, I agree with the majority that we would then turn our attention to federal case law in order to determine this issue. Unfortunately, the federal courts are not uniform in handling the use pseudonyms in pleadings. However, after reviewing the various tests

applied by the federal courts, I agree, in general, with the majority's decision to adopt the Sixth Circuit's test requiring the court to weigh the plaintiff's privacy interest against the presumption of open judicial proceedings. This test allows the court to consider the First Amendment rights of the press and the interests of the general public. Further, nothing in the case law prevents the trial court at some later stage from finding the use of a pseudonym no longer required or warranted.

**{¶ 18}** In looking at the Sixth Circuit's analysis, I find that the enumerated factors are not inclusive, but are without limitation. I also find that it is not the quantity of the factors presented, but the quality of the factors that should be weighed. For example, considerations of whether prosecution of a suit would compel the plaintiff to disclose information of the utmost intimacy may be in and of itself more significant than whether threats of retaliation have not been made.

**{¶ 19}** Until the Ohio Supreme Court sets down a protocol or guidelines for the courts of this state to use when dealing with a request to proceed under a pseudonym, I would suggest the following: (1) the trial court hold a hearing allowing all evidence to be presented to assist it in weighing the plaintiff's privacy interests versus the presumption of open judicial proceedings; (2) that the hearing be recorded, or if necessary, transcribed for appellate review; (3) that the court memorialize its findings either orally or by written decision; (4) in reaching its decision, the court consider: (a) the extent to which the identity of the litigant has previously been kept confidential; (b) the reason upon which disclosure is feared or sought to be avoided; (c) the chilling effect, if any, of disclosure and being publically identified; (d) the strength or need of the public to know the litigant's identity; (e) whether the parties seeking pseudonym has a legitimate or illegitimate ulterior motive; (f) whether either party is a public figure creating a strong public interest in knowing the identity of the litigant; and (g) whether

opposition to the use of pseudonyms has a legitimate basis.<sup>3</sup>

{¶ 20} For the reasons outlined above, I concur in judgment only.

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.

This opinion or 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/documents/>. Final versions of decisions are also available on the Twelfth District's web site at: <http://www.twelfth.courts.state.oh.us/search.asp>

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3. For a discussion of the rationale of such factors, see Steinman, *Public Trial, Pseudonymous Parties: When Should Litigants be Permitted to Keep Their Identities Confidential?*, 37 *Hastings L.J.* 1 (1985).

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
CLINTON COUNTY

CLINTON COUNTY  
CYNTHIA R. BAILEY, CLERK

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FILED-CT. OF APPEALS

JOHN DOE,

Plaintiff-Appellant,

- VS -

BRANDON BRUNER,

Defendant-Appellee.

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CASE NO. CA2011-07-013

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Clinton County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

  
\_\_\_\_\_  
Stephen W. Powell, Presiding Judge

  
\_\_\_\_\_  
Robert P. Ringland, Judge

  
\_\_\_\_\_  
William W. Young, Judge

Young, J., retired, of the Twelfth Appellate District, sitting by assignment of the Chief Justice, pursuant to Section 6(C), Article IV of the Ohio Constitution.