

Case No. _____ 14-1761

**Supreme Court
of the State of Ohio**

STATE OF OHIO *ex rel.* EMILIE DiFRANCO,

Relator-Appellant,

v.

CITY OF SOUTH EUCLID, OHIO, and KEITH A. BENJAMIN,

Respondents-Appellees,

and

MICHAEL P. LOGRASSO,

Appellee.

NOTICE OF APPEAL OF RELATOR-APPELLANT EMILIE DiFRANCO

APPEAL OF RIGHT (CASE ORIGINATING IN COURT OF APPEALS)

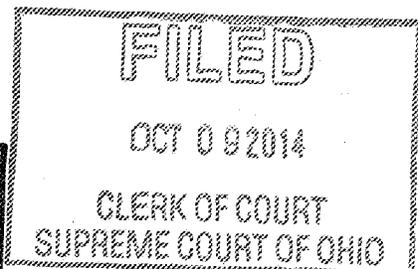
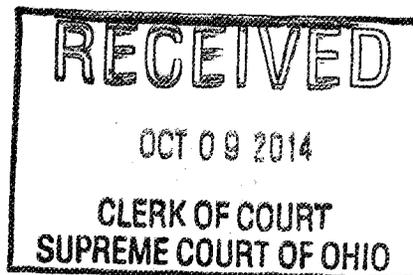
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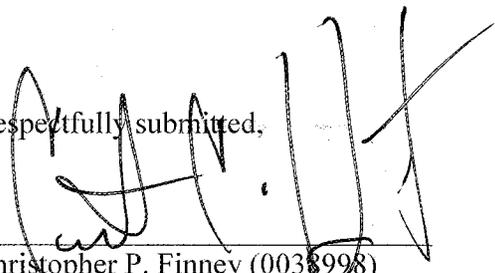
*Counsel for Appellees City of South Euclid, Ohio,
and Keith A. Benjamin*



NOTICE OF APPEAL

Relator-Appellant Emilie DiFranco, on relation and behalf of the State of Ohio, hereby gives notice of appeal to the Supreme Court of Ohio from the journal entry of the Cuyahoga County Court of Appeals, Eighth Appellate District, entered on September 17, 2014, in *State ex rel. DiFranco v. City of South Euclid, Ohio, et al.*, Case No. CA-11-97713. Attached hereto is a copy of the Journal Entry wherein the Court of Appeals denied the imposition of sanctions against the designated Appellees herein.

Respectfully submitted,



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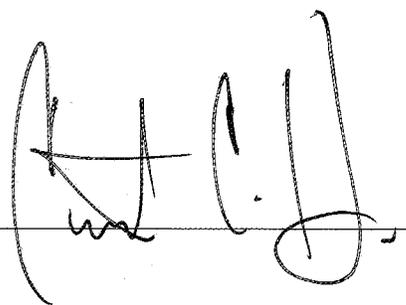
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Emilie DiFranco*

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing will be served, via e-mail, upon the following on the 6th day of October 2014

Michael P. Lograsso
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Court of Appeals of Ohio, Eighth District

County of Cuyahoga
Andrea Rocco, Clerk of Courts

S/O EX REL., EMILIE DIFRANCO

Relator

COA NO.
97713

ORIGINAL ACTION

-vs-

CITY OF SOUTH EUCLID, OHIO, ET AL.

Respondent

MOTION NO. 476226

Date 09/17/2014

Journal Entry

Relator's motion for the imposition of sanctions, as premised upon R.C. 2323.51 and Civ.R. 11, is denied. R.C. 2323.51 permits this court to award sanctions in a civil action, when a party engages in frivolous conduct. Original actions are civil in nature and thus are subject to R.C. 2323.51. Cf. *Fuqua v. Williams*, 100 Ohio St.3d 211, 2003-Ohio-5533, 797 N.E.2d 982. Frivolous conduct is defined as behavior that serves merely to harass or maliciously injure another party to the civil action or is employed for another improper purpose. R.C. 2323.51(A)(2)(a)(i). Frivolous conduct is also defined as the filing of a claim or defense that is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law. R.C. 2323.51(A)(2)(a)(ii). Cf. *State ex rel. Ohio Dept. Of Health v. Sowald*, 65 Ohio St.3d 338, 1992-Ohio-1, 603 N.E.2d 1017; *State ex rel. Naples v. Vance*, Mahoning App. No. 02-CA-181. Based upon the procedural history of this original action, we cannot find that the behavior of the respondents, in defending against the complaint for a writ of mandamus, was designed to harass or maliciously injure the relator. We further find that the conduct of the respondents, in defending against the complaint for a writ of mandamus, was warranted under existing law. Thus, the conduct of the respondents in defending against the complaint for a writ of mandamus was not frivolous and sanctions pursuant to R.C. 2323.51 are not warranted.

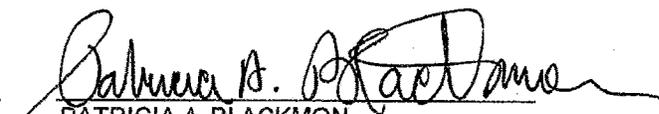
In addition, Civ.R. 11 provides in pertinent part: "The signature of an attorney or pro se party constitutes a certificate by the attorney or party that the attorney or party has read the document; that to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; * * * For a willful violation of this rule, an attorney or pro se party, upon motion of a party may be subjected to appropriate action, including an award to the opposing party of expenses and reasonable attorney fees incurred in bringing any motion under this rule * *



*.” The imposition of a sanction, pursuant to Civ.R. 11, mandates the application of a subjective bad-faith standard by requiring that any violation must be willful. *State ex rel. Dreamer*, 115 Ohio St.3d 190, 2007-Ohio-4789, 874 N.E.2d 510. The United States Supreme Court has opined that the purpose of Fed.R.Civ.P. 11, which is similar to Civ.R. 11, is to curb the abuse of the judicial system which results from baseless filings that burden the courts and individuals with needless expense and delay. *Cooter & Gell v. Hartmarx Corp.* (1990), 496 U.S. 384, 110 S.Ct. 2247, 110 L.Ed.2d 359. The United States Supreme Court has also held that the specter of Rule 11 sanctions encourages a civil litigant to “stop, think and investigate more carefully before serving and filing papers.” *Id.* Once again, based upon the procedural history of this original action in mandamus, we cannot find with certainty that the behavior of the respondents’ counsel, in defending against the complaint for a writ of mandamus, involved bad faith to support the relator’s claim that the counsel’s actions “[were] deliberately undertaken in order to frustrate and delay the production of all responsive records” to the relator. Accordingly, the respondent has failed to demonstrate that sanctions must be granted pursuant to R.C. 2323.51 or Civ.R. 11.

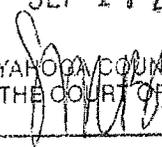
Presiding Judge SEAN C. GALLAGHER, Concurs

Judge EILEEN A GALLAGHER, Concurs


PATRICIA A. BLACKMON
Judge

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CUYAHOGA COUNTY CLERK
OF THE COURT OF APPEALS
By  Deputy

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