ORIGINAL

IN THE SUPREME COURT OF OHIO

WILLIAM H. EVANS,JR.
APPELLANT

VS.

CATHI J. EVANS
-[and]-
MARGARET K. EVANS-SANFORD
APPELLEE'S

Case No. 15-0275

On Appeal From The Scioto County Court Of Appeals, Fourth Appellate District

Court of Appeals Case No.14CA3647

MEMORANDUM IN SUPPORT OF JURISDICTION OF WILLIAM H. EVANS,JR.

WILLIAM H. EVANS,JR.
#A 489-686
Ross Correctional Institution
P.O.Box 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 774-7050

Pro Se for Appellant

CATHI J. EVANS
1722 Charles St.
Portsmouth,Ohio 45662
-[and]-
MARGARET K. EVANS-SANFORD
1624-4th.St.
Portsmouth,Ohio 45662

DAVID B. BECK (0068343)(Counsel of Record)
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
(740) 353-3113

Counsel for Appellee's

FILED
FEB 17 2015
CLERK OF COURT
SUPREME COURT OF OHIO

RECEIVED
FEB 17 2015
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF GREAT GENERAL INTEREST.....1-2

STATEMENT OF THE CASE AND FACTS.....2-3

ARGUMENT IN SUPPORT OF PROPOSITION'S OF LAW:

PROPOSITION ONE.....3
PROPOSITION TWO:.....3
PROPOSITION THREE.....4
PROPOSITION FOUR.....4-5
PROPOSITION FIVE.....5
PROPOSITION SIX.....5-6

CONCLUSION.....6
PROOF OF SERVICE.....7

APPENDIX: 52 pages,Decision and Judgment Entry,with other relevant opinion's.

EXPLANATION OF WHY THIS CASE RAISES A SUBSTANTIAL CONSTITUTIONAL QUESTION AND IS OF GREAT GENERAL INTEREST

This case entails betrayal by immediete family to the extent that it very nearly caused the death of Plaintiff.It amounted to cruel and unusual torturous circumstances for Plaintiff for approximately 10 years on end;homelessness;left his two Son's fatherless and any grandchildren without grandfather;and resulted in at least one death.

This case is about one man's quest to obtain at least some semblance of justice for himself,and to garner some small fraction of his irreparable losses.The rights to these above things are embodied in our U.S.Constitution,1st.,9th.,& 14th.Amendment's,as well as the Ohio Constitution,Article I §1,§16.

The "family" unit is the foundation of civil society,sanctioned by both civil and ecclesiastical authority.From a social point of view,it is a most important one.It provides,(or at least should provide), shelter,food,comfort,family life,happiness,and security for it's members,as well as an example of virtue,morality,and character.The general welfare of the human race,advances of civilization,education, the elevation to social equality,and the awakening of the finer things and subjugation of the gross in man,can be traced to the family as an institution.Human society could not endure without it.Cf.**POUND, "INDIVIDUAL INTERESTS IN THE DOMESTIC RELATIONS"**,14 Mich.L.Rev.177. Every member of a family has a"right"to protect rights,and in fact the State itself has an interest in the protection thereof.These rights are protected also under the U.S.Constitution against outside interference even by the government.**PIERCE V. SOCIETY OF SISTERS**,268 U.S. 510;**MEYER V. NEBRASKA**,262 U.S. 390.

In the case at bar,immediete family members have even violated criminal laws against the Plaintiff,including felonies.And Ohio law, as granted by the Legislature,allows any person to recover full damages in person or property,from any person who commits a criminal act.See, **O.R.C.§2307.60(A)(1)**.Nowhere in that statute does it proscribe a civil tort action simply because the State fails to prosecute.Ohio law has allowed such civil actions for criminal violation,in the absence of State prosecution,since the 1800's.See,**HOCK V. MINNICK**,19 Ohio St.462,465,citing **BOSTON and WORCESTER R & R CO. V. DANA**,1 Gray 83

(Mass.)..."The doctrine of English law,that for goods stolen no action lies against the felon before the institution of criminal proceedings against him,is not in force in this state".HOWK,at 465.

Quite clearly,the trial court,and then the court of appeals, has flagrantly foreclosed the very right to even proceed in this case within the bounds of the law,and has nipped-it-in-the-bud,shutting it down lest Plaintiff prove every single bit of his claims.The business of the appeals court's is to "correct error" and ensure that the law prevails.Instead,the courts have concealed what it could,and twisted and distorted the remainder of the claims beyond recognition.At the end of the day,all violations of law continue unabated,quite possibly to NEVER be remedied.

Surely the above situation begs for correction,not only from a personal interest,but also from a public policy interest.And this State's High Court should accept jurisdiction and hear this case on the merits.

STATEMENT OF THE CASE AND FACTS

This case originated with the filing of a civil complaint by Plaintiff-Appellant against his mother and also ex-wife,in the Scioto County Common Pleas Court Case No.13-CIH-166,on Sept.13,2013.

The complaint entails SEVERAL areas of law,and is best suited for the [General] Division.A Jury-Trial was also demanded.

On Oct.23,2013,Appellant filed an affidavit of disqualification to the Ohio Supreme Court.On Nov.07,2013,that judge voluntarily recussed himself,and on Nov.20,2013,the Chief Justice assigned a Judge Corbin to conduct all further proceedings.(Supreme Court Case No.13-AP-105).

** Due to the complexities of this case,Appellant has attatched quite a few pages to the Appendix,so this court will have all necessary and pertinent documents by which to properly and fairly determine jurisdiction.The U.S. Supreme Court allows such attatchments,and it seems only fitting that this court would as well.See,(U.S.) S.Ct. R. 14.1(i)(vi)..."any other material the petitioner believes essential to understand the petition".

Appellant had several discovery requests already pending, when Defendant's filed for summary judgment.Even so,Appellant showed several disputed facts under affidavit,which is to defeat a summary judgment as a matter of law.In the end,the trial court dismissed the complaint.The case then came on for timely appeal,as Case No.14CA3647 (4th.Dist.),which affirmed the judgment.Leaving Appellant without knowledge of whether he has grandchildren,in fact he has NOBODY,and

leaving him without remedy of any sort.

ARGUMENT IN SUPPORT OF PROPOSITIONS OF LAW

PROPOSITION NO. 1:**TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF,WHEN PLAINTIFF HAD NO ADEQUATE TIME FOR DISCOVERY, WITH DISCOVERY REQUESTS PENDING AND THE OPPOSITION TO SUMMARY JUDGMENT ESTABLISHING SEVERAL ISSUES IN DISPUTE.**

Appellant had several requests for discovery pending [before] Defendant's filed for summary judgment.These discovery requests also included requests for Admissions (which ultimatley were "Admitted" as a matter of law).On May 02,2014,Appellant filed an Opposition To Summary Judgment,which was also a counter-motion for summarry judgment.Therein Appellant showed several genuine issues of disputed facts, which is to defeat a summary judgment as a matter of law.**LUJAN V. NATIONAL WILDLIFE FEDERATION**,497 U.S. 871,888-89 (1990);**ANDERSON V. LIBERTY LOBBY,INC.**,477 U.S. 242,248 (1986);**MITSEFF V. WHEELER**,38 Ohio St.3d 112,115 (1988).

Moreover,under clearly established federal law,summary judgment may be granted only after the non-moving party has had an "adequate time for discovery".**CELOTEX CORP. V. CATRETT**,477 U.S. 317,322 (1986).

PROPOSITION NO. 2:**TRIAL COURT ERRED IN APPLYING "AFFIRMATIVE DEFENSES" BECAUSE DEFENDANTS WAIVED/FORFEITED THEM BY FAILING TO RAISE IT IN THEIR "ANSWER".**

The defendant's failed to ever raise the affirmative defenses of "statute of limitations" and "collateral estoppel" in their "Answer". Only later,after the "answer" was filed,did they raise such by way of Motion For Summary Judgment.That is not a valid way to assert any affirmative defense post-answer.See eg.,**PINOTTI V. PINOTTI**,2003 Ohio App.LEXIS 2790,at P.12 (6th.Dist.2003);**SAVOY V. UNIVERSITY OF AKRON**, 2012 Ohio App.LEXIS 1731 (9th.Dist.2012);**EVANS V. SOUTHERN OHIO MEDICAL CENTER**,109 Ohio App.3d 250 (4th.Dist.1995);**DRENNING V. BLUE RIBBON HOMES**,2007 Ohio App.LEXIS 1230,at P.76 (6th.Dist.2007);**JIM'S STEAK HOUSE V. CLEVELAND**,81 Ohio St.3d 18,20 (1998)....an affirmative defense not raised in the "Answer" is "waived/forfeited".See also, **WOOD V. MILYARD**,132 S.Ct.1826,1832 (2012).The court may not unilaterally raise the defense for them.**THROWER V. OLOWO**,2003 Ohio App.LEXIS 1938,at P.24 (8th.Dist.2003);**GREENLAW V. U.S.**,554 U.S. 237,243-44 (2008).

PROPOSITION NO. 3:**TRIAL COURT ERRED IN FAILING TO GRANT THE MOTIONS TO COMPEL DISCOVERY DISCLOSURES,WITH DISCOVERY REQUESTS PENDING [BEFORE] THE SUMMARY JUDGMENT WAS FILED.**

Pursuant to Civ.R.26(A),"Parties may obtain discovery by one or more of the following methods...written interrogatories;production of documents;...and requests for admissions"...the "frequency of use of these methods is not limited".A party may move for an order to compel,upon failure of a party to timely respond.Civ.R.37(A).The failure of the court to provide these compulsory rights,violated the U.S.Constitution,14th.Amendment,and also Ohio Constitution,Article I §16,and squashed the very right to redress (1st.Amendment).These State rules and statutes creates a "liberty interest" to Appellant. See,**WILKINSON V. AUSTIN**,545 U.S.209,221 (2005);**PAUL V. DAVIS**,424 U.S. 693,711 (1976).

PROPOSITION NO. 4:**TRIAL COURT ERRED IN DETERMINING THE ISSUES OF INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS,BREACH OF IMPLIED-CONTRACT,ABANDONMENTS,GRANDPARENT RIGHTS,AND OTHER DISPUTED FACTS, WHICH MUST BE DETERMINED BY A JURY IN A TRIAL.**

Due to there being a demand for a jury-trial,the trial court was not at liberty to determine facts,without those facts being presented to a jury,and only after discovery had established and fully developed those facts."The right to a trial by jury shall be inviolate". OHIO CONSTITUTION,Article I §5;Civ.R.38;U.S.Constitution,7th.Amendment.As example,there is the right to "grandparent rights" under O.R.C. §3109.051.There is the right to "visitation rights" for prisoners, and a criminal conviction is not a valid reason for denying it.**MATTER OF GRANGER V. MISERCOLA**,21 N.Y.3d 86,89-91,990 N.E.2d 110 (N.Y.2013)... holding that it is "presumed" that visitation is in the childs best interest;and the fact that the parent is in prison does not necessarilly make him unfit.See also,**IN RE.ADOPTION OF McCRAY**,331 A.2d 652, 655 (Pa.1975);**IN RE.SEGO**,513 P.2d 831 (Wash.1973);**IN RE.B.W.**,498 So. 2d 946 (Fla.1986).

Disputes of fact must be determined by a jury,after all evidence has been presented,for the jury to determine what "weight" to give to each piece.As example,the existence of "negligence" is sometimes said to be a mixed question of law and fact and best left to the jury.Cf.**PARLATO V. CONNECTICUT TRANSIT**,181 Conn. 66(1980);**WATERBURY V. BYRON JACKSON,INC.**,576 F.2d 1095 (5th.Cir.1978);**WEINER,"THE CIVIL JURY TRIAL and THE LAW-FACT DISTINCTION"**,54 Cal.L.Rev. 1867 (1966);

RESTATEMENT (Second) OF TORTS,§328C.

As a matter of law,Appellant stated cognizable claims,which were "sufficient" because particular Ohio statutes sets the standard of care owed.Therafter,it is the sole province of a jury.

PROPOSITION NO. 5:**TRIAL COURT ERRED IN FAILING TO DEEM ALL 26 FACTS SET FORTH AS REQUEST FOR ADMISSIONS,AS "ADMITTED",WHERE DEFENDANTS FAILED TO FILE ANY RESPONSES AT ALL,FAILED TO OBJECT,AND FAILED TO FILE FOR EXTENTION OF TIME.**

On April 04,2014,Appellant filed requests for admissions, setting forth 26 facts,and requesting Defendants to respond within 30 days.A copy of this was also "filed" in the trial court at that date.Never once did Defendants file a response,objection,nor for extention of time.Civ.R.36(C) Staff Notes (July 01,2005 Amendment) states,"Civ.R.36 imposes a virtually self-executing sanction,ie., admission by default,on a party that fails timely to respond.See generally,**CLEVELAND TRUST CO. V. WILLIS**,20 Ohio St.3d 66 (1985)". Compare also,**SWITCH MUSIC.COM V. U.S.MUSIC CORP.**,416 F.Supp.2d 812, 817 (C.D.Cal.2006)...admission by default is "automatic",under Civ. R.36(A)(1).In this case,Appellant even moved for such via motion.

The trial court,then the 4th.District alleges that,even with the admissions,there still is no claim stated.However,the "admissions" locked-in all elements for "Attempted Aggravated Murder"...(1)purposely, (2)with prior calculation and design,(3)Attempt to,(4)cause another's death.O.R.C.§2903.01(A),§2923.02...(1)purposely or knowingly,(2)engage in conduct that,if successful,would result in an offense.

Then we have the issue of tampering with a will,under O.R.C. §2913.42(B)(2)(b)..."if the writting or record is a will unrevoked", it is a felony five.And all stated claims of statute violations fall under O.R.C.2307.60(A)(1)..."Anyone injured in person or property by a criminal act has,and may recover full damages in,a civil action". This is along side the claims stated for negligent,wilfull,or reckless, tort violations,includiing I.I.E.D. claims.

PROPOSITION NO. 6:**TRIAL COURT ERRED IN DISMISSING THE MATTERS OF CRIMINAL COMPLAINT'S DONE UNDER AFFIDAVIT.**

In the Opinion of the 4th.District,that court alleges that Appellant failed to comply with part (D) of §2935.09.However that is false.To comply with part (D),the citizen may "file an[affidavit] charging the offense committed".That court goes on to reiterate that

§2935.09,provides a citizen with a means to charge another with a crime"by filing an affidavit".The court asserts that Appellants verified complaint does not meet the "affidavit" requirement.However,a verified document is in fact nothing less than:an Affidavit,as a matter of law.See,**BLACK'S LAW DICTIONARY**,23 (3rd.Pocket ed.2006)..."affidavit": "A voluntary declaration of facts written down and sworn to by the declarant before an officer...such as a notary public".And that is precisely what the civil complaint was,all done under notary public from beginning to end.

The 4th.District improperlly cites to Ohio Criminal Rule's regarding:"the [complaint] is the basic charging document".(No.14CA 3647,Jan.30,2015,¶28).However,the cases cited by that court,and the citation to the Criminal Rules is misplaced.Because,a private citizen, unlike the prosecutor,does NOT properly file a "complaint".Instead he files only an "affidavit" charging a violation of an Ohio criminal statute.While a prosecutor,when filing the criminal "complaint",must state facts which will meet all elements of an offense for that complaint to be valid,the charging "affidavit" which is filed by a private citizen does not have to state every element.In fact,a "complaint" by a citizen is improper,and only an "affidavit" is valid when done by a citizen. See,**STATE V. MBODJI**,129 Ohio St.3d 325,327 (2011)..."a citizen 'may file an affidavit charging the offense committed with a reviewing official for the purpose of review **to determine if a complaint should be filed by the prosecuting attorney'**",citing O.R.C.§2935.09.Appellant Evans filed an "affidavit" by filing his civil complaint.A complete and legally sufficient affidavit.Which is to be properly reviewed by a "reviewing official" [to determine if a complaint should be filed by prosecution].The court has only two options:(1)issue a warrent,or (2)refer the matter to the prosecutor **for investigation.STATE EX REL. BROWN V. JEFFERIES**,2012-Ohio-1522,at P.9-10 (4th.Dist.2012).Here,the court done neither.Either way,however,Appellant has a tort claim for the criminal violations regardless of whether the court's properly comply with O.R.C.§§2935.09,2935.10.

CONCLUSION

WHEREFORE this court should grant jurisdiction and hear this case on the merits.

Respectfully Submitted,

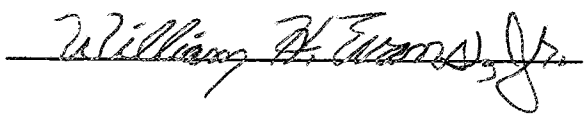
Feb.10,2015/ William H. Evans Jr.

WILLIAM H. EVANS,JR.
(Pro Se)

PROOF OF SERVICE

I certify that on this 10 day of Feb.,2015,I sent a copy of the foregoing by U.S.Mail,at:

DAVID B. BECK (0068343)
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
Counsel for Appellee's



THE COURT OF APPEALS OF OHIO

SCIOTO COUNTY
OHIO
FILED

2015 JAN 30 PM 12: 34

CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

WILLIAM H. EVANS, JR.,	:	Case No. 14CA3647
Plaintiff-Appellant,	:	
v.	:	DECISION AND JUDGMENT ENTRY
CATHI J. EVANS, ET AL.,	:	
Defendants-Appellees.	:	

THE STATE OF OHIO
SCIOTO COUNTY, SS.
LISA NOVINGER
CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SCIOTO COUNTY
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL DOCUMENT NOW ON FILE IN MY OFFICE WITNESS MY HAND SEAL OF SAID COURT
JAN 30 2015
LISA NOVINGER, CLERK
BY _____ DEPUTY

APPEARANCES:

William H. Evans, Jr., Chillicothe, Ohio, pro se appellant.

Harsha, J.

{¶1} William H. Evans, Jr. is a convicted murderer serving 15 years to life in prison. Evans filed a civil complaint against his ex-wife, Cathi J. Evans, who divorced him in 2002, and his mother, Margaret Evans-Sanford, alleging that neither of them visit him, talk to him, give him money, or tell him anything about their personal lives. He complains that they refuse to give him photographs of family members or residences. He alleges that Cathi and Margaret's decision to disassociate from him constitutes attempted aggravated murder. He is also dissatisfied with the division of marital property in the 2002 divorce decree, and alleges that he should have received a "large portion" of the marital assets. Finally, he alleges that his father died in 1995 and that in 2001 or 2002, his mother made a subtle and brief mention that he was removed from his parents' will, which Evans contends was illegal. The trial court granted summary judgment in favor of Cathi Evans and Margaret Evans-Sanford and dismissed the complaint.

{¶2} Evans asserts that the trial court erred when it granted summary judgment against him before he had adequate time for discovery. With the exception of his claim for intentional infliction of emotional distress, which we will address separately below, Evans's ex-wife and mother were entitled to judgment as a matter of law regardless of any facts Evans might assert. That made discovery irrelevant to the action because discovery could not add legitimacy to his case. Because summary judgment was appropriate, we overrule Evans's first assignment of error.

{¶3} Next Evans claims that the trial court erred when it applied the affirmative defenses of statute of limitations and estoppel where the defendants failed to raise them in their answers. Because Evans's ex-wife and mother were entitled to judgment as a matter of law without any application of either defense, any purported error concerning affirmative defenses is moot. We overrule Evans's second assignment of error.

{¶4} Third, Evans again asserts that the trial court erred in denying his motions to compel discovery. The court's rulings on discovery motions are moot based on the same rationale we applied under the first assignment of error. Thus, we overrule Evans's third assignment of error.

{¶5} In his fourth assignment of error Evans argues that the trial court erred in granting summary judgment on the actions for intentional infliction of emotional distress, breach of implied contract, abandonment and grandparents rights claims because these claims must be decided by a jury. This contention is meritless because, with the exception of the claim for intentional infliction of emotional distress, Evans failed to plead any viable legal claims in his complaint. On the claim for intentional infliction of emotional distress and breach of implied contract, his only facially viable claims, Evans

failed to meet his burden on summary judgment. Thus, he had no right to a jury trial. We overrule Evans's fourth assignment of error.

{¶6} In his fifth assignment of error Evans claims that the trial court erred in failing to deem admitted all 26 facts set forth in his request for admissions when defendants failed to respond to them. Once again, the appellees were entitled to judgment as a matter of law based upon the face of the pleadings. So with the exception of the claims for intentional infliction of emotional distress, and breach of implied contract, nothing in request for admissions would have affected that conclusion. Therefore any possible error regarding the admissions is moot. Moreover, even if we deemed the request admitted, they did not raise a genuine issue of material fact that would preclude summary judgment on his claims for intentional infliction of emotional distress and breach of implied contract. Thus, we overrule Evan's fifth assignment of error.

{¶7} In his sixth and final assignment of error Evans argues that the trial court erred in dismissing his criminal claims without either issuing a warrant or referring them to the prosecution for investigation. Because Evans failed to charge the commission of an offense as provided in R.C. 2935.09(D), he did not properly invoke the criminal jurisdiction of the court. Therefore, the trial court was not required to comply with the provisions of R.C. 2935.10, i.e., issue a warrant or refer the matter for investigation. Rather, dismissal of the complaint was appropriate. We overrule Evans's sixth assignment of error and affirm the judgment of the trial court.

I. FACTS

3

{¶8} William H. Evans, Jr. and Cathi Evans divorced in 2002 after he was incarcerated for domestic violence. Both Cathi and William Evans's mother, Margaret, obtained civil protection orders against Evans in 2002 and 2004. In August 2004, a few months after his mother obtained a civil protection order, Evans brutally beat and fatally strangled a female acquaintance. A jury convicted Evans of murder and the trial court sentenced him to 15 years to life in prison. He appealed and we affirmed the judgment. See *State v. Evans*, 4th Dist. Scioto No. 05CA3002, 2006-Ohio-2564. Evans is currently incarcerated at the Ross Correctional Institute. His attempts to contact appellees over the past ten years have resulted in charges for violating the protection order and a cease and desist order against him.

{¶9} In 2013 Evans filed a lawsuit against his ex-wife Cathi and his mother, Margaret Evans-Sanford. He alleged that he was married to Cathi and had two sons, who are now adults. Cathi divorced him in 2002 and since that time has had no further association with him. He claims that his incarceration for domestic violence led to his divorce and that Margaret also refused further association with him in 2002 as a result of his acts of domestic violence. Complaint ¶¶1-7 He acknowledges that both appellees obtained civil protection orders against him in 2002 and 2004. And he admits additional charges for violation of the protection orders and a cease and desist order occurred because he continued in his attempts to contact his ex-wife, mother, and children. He also alleges he was unable to contact his two sons. Complaint ¶8.

{¶10} Evans makes vague allegations concerning his purported inheritance. He claims, "In 2001-2002, there was a subtle and brief mention by Margaret, that William was cancelled out of the will (of his father and mother). William is unsure whether there

is any truth to that, but to be sure he assumes there is." Complaint ¶9. He states that any such changes to his parents' will would be illegal and void. He alleges that he is positive that when his father died in 1995 he was the only heir to his father's will. He claims that any such changes would constitute a felony under R.C.2913.42. Complaint ¶9.

{¶11} Evans claims that the division of marital property "was also counter to law, as it was to be 'EQUAL' under O.R.C. §3105.171; and at any rate William was to get at least a large portion. . . ." Complaint ¶10.

{¶12} And Evans alleges that appellees' decisions to physically, emotionally, and financially disassociate from him were made intentionally and knowingly and are an ongoing source of mental anguish and emotional distress to him. He further states that he has no contact with his two adult sons and, "if it turns out that Cathi and Margaret [did] actually turn them against him . . . then that means the damages is uncorrectable" and constitutes irreparable harm. Complaint ¶11 (brackets in original).

{¶13} Evans further claims that appellees' decisions to physically, emotionally, and financially disassociate themselves from him constitutes attempted aggravated murder under R.C. 2923.02 and R.C. 2903.01. Complaint ¶12.

{¶14} Finally, Evans alleges that appellees have attempted to mislead him about their whereabouts and told others who then subsequently told Evans that the family was residing in Illinois. As a result, Evans filed a federal lawsuit in the United States District Court, Central District of Illinois seeking their whereabouts. He has had other inmates' family members obtain information about appellees and his two adult sons through

5

internet social media sites. He claims that his belief that appellees had moved to Illinois tolls any applicable statute of limitations. Complaint ¶13.

{¶15} In his prayer for relief he demanded judgment against appellees in the sum of $1 million, the issues with the will be "resolved according to law," appellees "step forward" and financially assist him, he receive photographs of appellees and their houses, he receive all contact information for his two adult sons, "closed doors be opened" to facilitate resolution of his claims, and he receive grandparent rights for any grandchildren that may exist. His complaint was verified and included a request for a jury trial.

II. ASSIGNMENTS OF ERROR

{¶16} Evans assigns the following errors for our review:

I. Whether the trial court erred when it granted summary judgment against him when he had no adequate time for discovery.

II. Whether the trial court erred in applying the defenses of statute of limitations and estoppel for the benefit of the defendants where the defendants waived these defenses by failing to raise them in their answers.

III. Whether the trial court erred in denying his motions to compel discovery.

IV. Whether the trial court erred in determining the issues of infliction of emotional distress, breach of implied contract, abandonment and grandparents rights claims because he argues that these claims must be determined by a jury.

V. Whether the trial court erred in failing to deem all 26 facts set forth in his request for admissions as admitted when defendants failed to respond to them.

VI. Whether the trial court erred in dismissing his criminal claims without either issuing a warrant or referring them to the prosecution for investigation.

6.

III. LAW AND ANALYSIS

A. First & Fourth Assignments of Error

{¶17} Evans contends that the trial court erred when it granted summary judgment against him without allowing him adequate time for discovery. In his fourth assignment of error he argues the trial court improperly granted summary judgment and denied him his right to a jury trial. We will consider these assignments of error together.

{¶18} In granting defendants' summary judgment motion, the trial court found that the "complaint alleges no causes of action which are cognizable claims under Ohio law in this action." The court placed Evans's claims into four main categories: (1) probate claims concerning Evans's father's will and arising from his death in 1995; (2) domestic relations claims concerning his 2002 divorce proceedings; (3) criminal claims; and (4) tort claims. In addition to finding that the complaint failed to state a claim upon which relief can be granted, the trial court dismissed the probate and domestic relations claims on several alternative grounds: (1) the probate and domestic relation courts have jurisdiction over will contests and divorces and (2) any claims related to the 1995 probate estate or the 2002 divorce would be barred by the applicable statutes of limitations. The trial court found Evans's criminal claim for attempted murder to be baseless. Finally, the trial court found no statement of any claim upon which relief can be granted on Evans's claim for intentional infliction of emotional distress.

{¶19} The trial court also denied Evans's motion to compel discovery because discovery could not add legitimacy to the merits of his case:

> The Court finds that neither the answers to such interrogatories nor the requests for admissions, even if admitted, would add anything to Plaintiff's Complaint and his claims and causes of action therewith which would render any of his claims to

be such as would entitle him to any relief under Ohio Law, having construed the Complaint and all claims thereunder in a light most favorable to the Plaintiff.

1. STANDARD OF REVIEW

{¶20} Appellate review of summary judgment decisions is de novo, governed by the standards of Civ.R. 56. *Vacha v. N. Ridgeville*, 136 Ohio St.3d 199, 2013-Ohio-3020, 992 N.E.2d 1126, ¶ 19. Summary judgment is appropriate if the party moving for summary judgment establishes that (1) there is no genuine issue of material fact, (2) reasonable minds can come to but one conclusion, which is adverse to the party against whom the motion is made and (3) the moving party is entitled to judgment as a matter of law. Civ.R. 56; *New Destiny Treatment Ctr., Inc. v. Wheeler*, 129 Ohio St.3d 39, 2011-Ohio-2266, 950 N.E.2d 157, ¶ 24; *Chase Home Finance, LLC v. Dunlap*, 4th Dist. Ross No. 13CA3409, 2014-Ohio-3484, ¶ 26.

{¶21} The moving party has the initial burden of informing the trial court of the basis for the motion by pointing to summary judgment evidence and identifying the parts of the record that demonstrate the absence of a genuine issue of material fact on the pertinent claims. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 662 N.E.2d 264 (1996); *Chase Home Finance* at ¶ 27. Once the moving party meets this initial burden, the non-moving party has the reciprocal burden under Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue remaining for trial. *Dresher* at 293.

2. DISASSOCIATION

{¶22} After an independent review of Evans's complaint, Appellees' motion for summary judgment, and Evans's opposition to the motion, we agree that there is no genuine issue of material fact, reasonable minds can come to but one conclusion, which is adverse to Evans, and Appellees are entitled to judgment as a matter of law. Even if

8.

everything that Evans has alleged is true, appellees are under no legal obligation to associate with him, communicate with him, provide financial or emotional support to him, or give him any information about their personal lives. *Castle v. Castle,* 15 Ohio St.3d 279, 473 N.E.2d 803 (1984)(a parent's duty to support a child ends when the child reaches the age of majority); *Bentz v. Bentz,* 171 Ohio State 535, 173 N.E.2d 129 (1961)(a spouse's marital obligations are terminated by divorce and replaced by the divorce decree). Appellees are not liable for the emotional distress he claims he suffers as a result of their decision to disassociate themselves from him. Appellees demonstrated the absence of a genuine issue of material fact on this tort claim and Evans failed to meet his reciprocal burden under Civ.R. 56(E) to set forth specific facts showing that there is a genuine issue remaining for trial. The only facts he alleged were the appellees' decisions to disassociate from him. The trial court correctly concluded that the appellees have every right to choose to separate themselves and their lives from Evans. Nothing in his requests for discovery could have altered that conclusion. Therefore the court properly dismissed all his purported tort claims on summary judgment.

3. 2002 DIVORCE

{¶23} Evans failed to state any claim for relief against his mother concerning the 2002 divorce decree and the division of marital property as she is not his spouse. Turning to his ex-wife, he claims that he should have received a larger portion of marital property and the division was unlawful. However, the remedy for any alleged errors in the divorce decree was a timely appeal of the decree. Res judicata precludes Evans from bringing a civil claim against his ex-wife eleven years later in a court of common

pleas to obtain a different division of marital property. Moreover, the Domestic Relations Division, not the General Division, of the Court of Common Pleas has jurisdiction over divorce actions. Discovery would not have altered these conclusions. Therefore, summary judgment was appropriate in this claim.

4. PROBATE MATTERS

{¶24} Evans also fails to state any viable claim concerning his father's will. He alleges that his father died in 1995, but he makes no allegations that any wrongful acts concerning his father's will occurred prior to his death, at the time of his father's death, or during the six or seven years following it. He states that he does not know if any changes to his parents' wills occurred, but he assumes that there may have been some illegal changes. His assumption is based on his understanding that, at some point in either 2001 or 2002, his mother made "a subtle and brief mention" that he was "cancelled" out of the will of his father and mother. Complaint ¶9. Even if we accept the allegations of his complaint as being true, we cannot construe any possible civil claim for relief. And we also agree with the trial court that to the extent any possible claim concerning his father's will exists, jurisdiction over it lies with a probate court. We address any alleged error related to the felony allegation of tampering when we address his sixth assignment of error, which concerns the trial court's failure to act on his criminal complaint. Summary judgment and/or outright dismissal for lack of jurisdiction was appropriate in this claim also.

{¶25} The trial court properly denied Evans's request for discovery, and granted summary judgment in favor of appellees. Because summary judgment was appropriate on his tort and contract claims, he had no right to a jury trial. *Houk v. Ross*, 34 Ohio

St.2d 77, 296 N.E.2d 266 (1973)(an individual's right to a jury trial is not violated by the proper granting of a summary judgment motion). We overrule Evans's first and fourth assignments of error.

B. Assignments of Error Two, Three, & Five

{¶26} Evans's second, third, and fifth assignments of error are moot as a result of our disposition of the first and fourth assignments of error. See App.R.12(A)(1)(c).

C. Assignment of Error Six

{¶27} In his sixth assignment of error Evans argues that the trial court erred in dismissing his criminal claims without either issuing a warrant or referring them to the prosecution for investigation as provided in R.C. 2935.10. Evans identifies two felonies in his complaint: (1) tampering with records under R.C. 2913.42 and (2) attempted aggravated murder under R.C. 2923.02 and R.C. 2903.01. However, he fails to properly charge the commission of an offense for either tampering with records or for attempted aggravated murder.

{¶28} Under the Ohio Rules of Criminal Procedure the complaint is the basic charging document. A complaint forms the essential basis for invoking the trial court's jurisdiction. *State v. Robinette,* 118 Ohio App.3d 450, 455, 693 N.E.2d 305,307 (4th Dist. 1997). Although a complaint need not state all the specific facts that would sustain the charge, it must contain all the elements of the charged offense. *State v. Pepka,* 125 Ohio St.3d 124, 127, 926 N.E.2d 611, 614 (2010) citing *Harris v. State*, 125 Ohio St. 257, 181 N.E. 104 (1932); Katz, Martin, Lipton, Giannelli & Crocker, *Baldwin's Ohio Practice, Criminal Law,* Section 35:1 (3rd Ed. 2013).

{¶29} R.C. 2935.09 provides a private citizen with the means to charge another individual with a crime by filing an affidavit with (1) a judge, magistrate, or clerk of court of record or (2) the prosecuting attorney. Here, Evans filed a verified civil complaint with the clerk of court. In *State ex rel. Brown v. Jeffries,* 4th Dist. Ross App. No. 11CA3275, 2012-Ohio-1522, we held that where a private citizen charges a criminal offense as set forth in R.C. 2935.09(D) and the offense is a felony, R.C. 2935.10(A) requires the judge, clerk, or magistrate to either issue a warrant for the arrest of the person charged in the affidavit or refer the matter to the prosecuting attorney. Here, Evans's complaint does not set forth the elements of the charged offenses. He states no cause of action for either tampering with records or attempted aggravated murder based on the facts in the verified complaint.

{¶30} We turn first to the alleged tampering with his father's will. Evans stated that he had no personal knowledge and was assuming tampering had occurred based upon a "subtle and brief mention" by his mother six or seven years after his father's death that Evans was "cancelled" out of the will. Those allegations fail to charge the offense of tampering with records under R.C. 2913.42.[1]

---

[1] The relevant section of R.C. 2913.42 states: (A) No person, knowing the person has no privilege to do so, and with purpose to defraud or knowing that the person is facilitating a fraud, shall do any of the following:
(1) Falsify, destroy, remove, conceal, alter, deface, or mutilate any writing, computer software, data, or record;
(2) Utter any writing or record, knowing it to have been tampered with as provided in division (A)(1) of this section.
(B)(1) Whoever violates this section is guilty of tampering with records.
(2) Except as provided in division (B)(4) of this section, if the offense does not involve data or computer software, tampering with records is whichever of the following is applicable:
(a) If division (B)(2)(b) of this section does not apply, a misdemeanor of the first degree;
(b) If the writing or record is a will unrevoked at the time of the offense, a felony of the fifth degree.

12.

{¶31} Evans also failed to charge the commission of attempted aggravated murder. The only factual allegations he makes in that regard are that the appellees disassociated from him and he has suffered emotionally as a result. Such conduct does not constitute attempted aggravated murder. *See* R.C. 2903.01.[2]

{¶32} Evans must comply with R.C. 2935.09(D) before a judge has any duty to act under R.C. 2935.10. Because Evans failed to charge the commission of a felony, the trial court had no duty to issue a warrant or refer the matter to the prosecutor. In other words, Evans's complaint/affidavit failed to invoke the criminal jurisdiction of the court. Although the Ohio Rules of Criminal Procedure do not provide for summary judgment, Crim. R. 12(C)(2) allows any party or the court to address a failure to charge an offense. *State v. Mbodji,* 129 Ohio St.3d 325, 329, 2011-Ohio-2880, 951 N.E.2d 1025, 1029 (2011)(defects in a private citizen's complaint are properly addressed through a Crim R. 12(C) motion). Thus, dismissal of the criminal allegations was appropriate even though summary judgment was not the correct procedural device to

---

[2] R.C. 2903.01 states: (A) No person shall purposely, and with prior calculation and design, cause the death of another or the unlawful termination of another's pregnancy.
(B) No person shall purposely cause the death of another or the unlawful termination of another's pregnancy while committing or attempting to commit, or while fleeing immediately after committing or attempting to commit, kidnapping, rape, aggravated arson, arson, aggravated robbery, robbery, aggravated burglary, burglary, trespass in a habitation when a person is present or likely to be present, terrorism, or escape.
(C) No person shall purposely cause the death of another who is under thirteen years of age at the time of the commission of the offense.
(D) No person who is under detention as a result of having been found guilty of or having pleaded guilty to a felony or who breaks that detention shall purposely cause the death of another.
(E) No person shall purposely cause the death of a law enforcement officer whom the offender knows or has reasonable cause to know is a law enforcement officer when either of the following applies:
(1) The victim, at the time of the commission of the offense, is engaged in the victim's duties.
(2) It is the offender's specific purpose to kill a law enforcement officer.
(F) Whoever violates this section is guilty of aggravated murder, and shall be punished as provided in section 2929.02 of the Revised Code.
(G) As used in this section:
(1) "Detention" has the same meaning as in section 2921.01 of the Revised Code.
(2) "Law enforcement officer" has the same meaning as in section 2911.01 of the Revised Code.

13.

obtain that result. Nonetheless, any error in the court's procedure was harmless beyond a reasonable doubt. We overrule the sixth assignment of error.

IV. CONCLUSION

{¶33} The trial court properly entered summary judgment for appellees on all the civil claims in Evans's complaint, because there was no genuine issue of material fact, the only reasonable conclusions are adverse to Evans, and the appellees were entitled to judgment as a matter of law. Dismissal as a matter of law was also appropriate for the improper attempt to invoke the trial court's criminal jurisdiction under R.C. 2935.09 et seq.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT IS AFFIRMED and that Appellant shall pay the costs.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Scioto County Court of Common Pleas to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Hoover, P.J. & McFarland, J.: Concur in Judgment and Opinion.

For the Court

BY:
William H. Harsha, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

"File-Stamp" & Return

COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

WILLIAM H. EVANS, JR.
Plaintiff-Appellant

App. Case No. 14-CA-3647

(Regular Calendar)

VS.

CATHI J. EVANS

-[AND]-

MARGARET K. EVANS-SANFORD
Defendant's-Appellee's

THE COURT OF APPEALS OF OHIO
SCIOTO COUNTY
2014 SEP -8 AM 8:31
Diane Thompson
CLERK OF COURTS

ON APPEAL FROM THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO
Trial Case No. 12-DIV-166

BRIEF OF APPELLANT

WILLIAM H. EVANS, JR.
SP-480-986
Ross Correctional Institution
P.O. Box 7010, 16149 SR 104
Chillicothe, Ohio 45601
(740) 774-7033
Pro Se for Appellant

DAVID D. BECK (0068343)
800 Gallia St., Suite 300
Portsmouth, Ohio 45662
(740) 353-3113
(740) 353-8561 (Fax.)
Counsel for Appellee's

16.

TABLE OF CONTENTS

Table Of Authorities	iii
Assignments Of Error	1-2
Issues Presented	2
Statement Of The Case And Facts	2-4
Arguments:	
ERROR ONE	4-5
ERROR TWO	5-6
ERROR THREE	6-7
ERROR FOUR	7
ERROR FIVE	7-9
ERROR SIX	9
CONCLUSION	10
PROOF OF SERVICE	10

17.

<u>TABLE OF AUTHORITIES</u>

CASES:

ANDERSON V. LIBERTY LOBBY,477 U.S. 242 (1986)........................5
BEARD V. BANKS,126 S.Ct. 2572 (2006)........................5
CELOTEX CORP. V. CATRETT,477 U.S. 317 (1986)........................5
CLEVELAND TRUST CO. V. WILLIS,20 Ohio St.3d 66 (1985)........................5
CLUB ITALIA SOCCER & SPORTS ORG. V. CHARTER TWNSP.OF SHELBY,MICHIGAN,
470 F.3d 286 (6th.Cir.2006)........................7
CULP V. FEDERATED DEPARTMENT STORES,11 Ohio App.2d 165 (2nd.Dist.1965)........................9
DRENNING V. BLUE RIDGE HOMES,2007 Ohio App.LEXIS 1230 (6th.Dist.2007)........................6
EVERHOME MORTGAGE CO. V. BEHRENS,2012-Ohio-1454 (11th.Dist.2012)........................6
GREENLAW V. U.S.,554 U.S. 237 (2008)........................6
GUESS V. WILKINSON,123 Ohio App.3d 430 (10th.Dist.1997)........................6
HARLESS V. WILLIS DAY WAREHOUSING CO.,54 Ohio St.2d 64 (1978)........................5
HUFFER V. CICERO,107 Ohio App.3d 65 (4th.Dist.1995)........................6
INFORMATION HANDLING SERVICES V. DEFENSE AUTOMATED PRINTING,338 F.3d 1024(D.C.Cir)5
JEFFERSON V. CHATTANOOGA PUBLISHING CO.,375 F.3d 461 (6th.Cir.2004)........................5
JIM'S STEAK HOUSE,INC. V. CLEVELAND,81 Ohio St.3d 18 (1998)........................6
LAVENDER V. KURN,327 U.S. 645 (1946)........................9
LUJAN V. NATIONAL WILDLIFE FEDERATION,497 U.S. 871 (1990)........................5
MAYS V. KROGER CO.,129 Ohio App.3d 159 (12th.Dist.1998)........................6
MILLER V. LINT,62 Ohio St.2d 209 (1980)........................6
MITSEFF V. WHEELER,38 Ohio St.3d 112 (1988)........................5
NEEDLES V. RAITZ,2012-Ohio-5021........................6
PAUL V. DAVIS,424 U.S. 693 (1976)........................7
STATE EX REL.BROWN V. WARDEN,JEFFERIES,2012 Ohio App.LEXIS 1325 (4th.Dist.2012)..9
STATE V. DeHASS,10 Ohio St.2d 230 (1967)........................9
STATE V. [illegible],129 Ohio St.3d 325 (2011)........................9
STATE EX REL THE PLAIN DEALER V. CLEVELAND,75 Ohio St.3d 31 (1996)........................6
STATE V. THOMPKINS,78 Ohio St.3d 380 (1997)........................9
STATE V. TODDY,2001 Ohio App.LEXIS 1549........................9
SWITCHMUSIC.COM V. U.S.MUSIC CORP.,416 F.Supp.2d 812 (C.D.Cal.2006)........................9
TAYLOR V. MERIDIA HOSPITAL,142 Ohio App.3d 125 (2000)........................6
THROGER V. OLOUD,2003 Ohio App.LEXIS 1938 (8th.Dist.2003)........................6
VAUGH V. U.S.SMALL BUSINESS ADM.,65 F.3d 1322 (6th.Cir.1995)........................5
WILKINSON V. AUSTIN,545 U.S. 209 (2005)........................7
WOOD V. MILYARD,132 S.Ct. 1826 (2012)........................6

STATUTES AND RULES:

Ohio Revised Code §2935.09........................9
§2935.10........................9
Ohio Civil Rules 26,33,37,38,39 and 8........................4-8

CONSTITUTION:

Ohio Constitution.Article I,§5,§16........................4,7
U.S.COnstitution,7th.and 14th.Amendment's........................4,7

18.

ASSIGNMENTS OF ERROR PRESENTED FOR REVIEW

*ERROR ONE:Trial court erred in granting summary judgment against Plaintiff,when Plaintiff had no adequate time for discovery.("Motion For Summary Judgment",dated April 21,2014)("Opposition To Summary Judgment"-8 pages in length,dated April 28,2014)...(filed May 02,2014)note that the"Opposition To Summary Judgment"was filed simultaniously with a"Objection To & Motion To Strike Affidavits For Improper Form",2 pages in length).

*ERROR TWO:Trial court erred in applying the "affirmative defenses" of "statutes of limitations" and "estoppel" (res judicata) to the benefit of Defendant's,because Defendant's "waived/forfieted" the affirmative defenses by failing to raise it in their "answer" and did not file an amendment to that answer and brought those defenses for the first time in a motion for summarry judgment.(Complaint,filed Sept.13,2013)(Answer,filed Oct.14,2013)(Judgment Entry,filed Aug.01, 2014).

*ERROR THREE:Trial Court erred in failing to grant motions to compel discovery disclosures,with discovery requests already pending [before] the motion for summary judgment was filed.(Entry of Requests For Disclosure of Discovery,filed May 12,2014)(Request For Admissions and Written Interogatories,filed April 04,2014)(Motion For Order To Compel Disclosure of Discovery,filed April 10,2014)(Motion For Summary Judgment,filed April 21,2014)...(The court GRANTED the request to be relieved of electronic copy requirments)(Judgment entry,filed Aug.01,2014).

*ERROR FOUR:Trial court erred in determining the issues of Infliction of Emotional Distress (neglegent or intentional infliction),and the issues of breach of implied-contract,abandonments,and grandparent rights,which are facts that must be determined by a jury in a trial. (Complaint,p.6..."A civil jury trial is hereby requested",filed Sept. 13,2013)(Judgment Entry,filed Aug.01,2014)(Request For Admissions,filed April 04,2014,pp.1-4).

*ERROR FIVE:Trial court erred in failing to deem all 26 facts set forth as Request for Admissions,as "ADMITTED",when Defendant's failed to file any responses at all,and failed to move for extention of time. (Reuqest For Admissions And Written Interrogatories,filed April 04, 2014)(Motion for Order...to Deem The Requests For Admissions As "ADMITTED",filed May 12,2014)

*ERROR SIX:Trial court erred in dismissing the matters of criminal complaints done under affidavit's.(Complaint,filed Sept.13,2013)(Request

19.

for Admissions,done under notary,and filed with Opposition To Motion For Summary Judgment on May 02,2014).

ISSUES PRESENTED

(1)Did the trial court err by granting a summary judgment,when there was no adequate time for discovery,and with discovery requests pending, and the opposition to summary judgment establishing several issues in dispute?(ERROR ONE).

(2)Is the trial court permitted to consider affirmative defenses asserted for the first time via summary judgment,where there is failure to raise those defenses in an Answer or amendment to the "pleadings"? (ERROR TWO).

(3)Does the court err in failing to grant motions to compel discovery when those motions are pending [before] a motion for summary judgment is filed?(ERROR THREE).

(4)When a jury-trial is requested,does the court err in making factual determinations without a jury or a trial,as to Infliction of Emotional Distress,breach of implied-contracts,abandonments,grandparent rights,and other issues?(ERROR FOUR).

(5)When a party fails to respond timely to rqquests for admissions, and files no requests for extentions of time,is the court required to deem all those averments as "ADMITTED"?(ERROR FIVE).

(6)Is the trial court permitted to dismiss criminal complaints filed under affidavit,and does the court have an obligation to either issue a warrant (or) refer to prosecution for investigation?(ERROR SIX).

STATEMENT OF THE CASE AND FACTS

This case originated with the filing of a Complaint on Sept. 13,2013 by Plaintiff (hereinafter,"Bill"),against his ex-wife (herein after,"Cathi") and his mother (hereinafter,"Margaret).Said complaint encompassing several areas of law,invoking the equity jurisdiction of the trial court,as well as jurisdiction for tort law violations, the criminal jurisdiction,and domestic as well as probate issues.It also envolves breach of implied-contract.The implied-contract,and subsequent abandonment,stems from the common human experience and principle that a person has a reasonable expectation,and a duty owed him by his immediate family,that they would always take care so not to knowingly violate laws (statutes) against him and further would never abandon him and leave him destitute when it is within their control to avoid such.And that,since they provided for him,and upheld

20.

those basic assumed duties of immediate family for all the years up until the TOTAL DESERTION IN 2002,then thereafter they had a duty to continue in that until death do them part under the theory of implied-contract,or to at least continue in fulfilling that contract until a mutually and fair agreement could be had,and to not abruptly breach the same,without warning,and to never again resume it,leaving the grievant for dead.It also envolves shared-parenting,and shared-grandparenting,and the right to be apprised of the status of one's chilkdren,and grandchildren,the right to know if grandchildren exists, and the right to communicate with them,and have visits with them.

It further envolves issues regarding a "will" which Bill's father had bequeathed inheritance to his only child and son,before his death of 1995.This envolves the spoliation of that will,AFTER his death which violates law and the wishes of his father,amounting to a tort violation for"tampering with records" aside from the actual probate matters.(See Compleint,filed Sept.13,2013).And it is also alleged that it was the "intentions" of Cathi and Margaret,that this would cause the death of Bill,or also "knowingly" create a deadly situation for him.And that ALL THE ABOVE also rises to the level of Intentional Infliction Of Emotional Distress (IIED),or Neglegent Infliction Of Emotional Distress. Margaret had no authority to cancel a legal will of decedent.

It is moreover asserted that all of the above issues was to be determined via a jury trial as requested,not in a summary judgment and dismissal without even finding the facts or permitting the rights to compulsory process' of the court to discovery-proceedures. To hear the trial judge tell it,there is no right to know the whereabouts of one's children,or to know whether one has grandchildren, to have one's deceased fathers' will/wishes complied with,to obtain these things that Bill has a clear legal right to obtain,to halt the commission of violations of penal statutes and to correct violations of the same,and to be compensated for damages and losses.The judge instead alleges that Defendant's had/have every right to do what they've done.(Judgment Entry,p.2).Clearly there is no right to knowingly violate law,or to knowingly infringe upon the rights of another,and to essentially rob him blind.

Whether any of this constitutes a violation of lawin Ohio cannot even be properly determined until the Discovery process' unfolds, pursuant to Civ.R.26-37,and facts determined via trial under Civ.

21.

Civ.R.38.[(While Plaintiff inadvertantly failed to state "jury demand endorsed thereon",he did request it in the Relief portion of the complaint filed Sept.13,2013 (p.6 thereof))(further the court,Corbin, said in the teleconference of Feb.21,2014,that he will construe it as a jury-trial requested)].Also in the Request For Admissions and Written Interrogatories,Plaintiff placed "Jury Trial Requested" in the caption.Pursuant to Civ.R.38(A),that jury trial request is to be "inviolate".See also,OHIO CONSTITUTION,Article I §5;and Seventh Amendment,U.S.Constitution;Civ.R.39(A).The judge made no findings, nor had basis to find,that a trial is not necessary.Plaintiff established SEVERAL disputed and relevant facts.See eg.,"Opposition to Summary Judgment"

In the end,the trial court granted a motion for summary judgment and dismissed the action.Defendant's than filed a Notice of Dismissal,of their counter-claims,on Aug.15,2014.Thereafter a timely Notice of Appeal was filed on Aug.13,2014,and the record transmitted to the appeals court on Aug.25,2014.And the matter is now properly before this Court of Appeals.

ARGUMENT

ERROR ONE:TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT AGAINST PLAINTIFF,WHEN PLAINTIFF HAD NO ADEQUATE TIME FOR DISCOVERY.

Plaintiff,Bill,had several requests for discovery pending [before] the Defendant's even filed a motion for summary judgment. The discovery requests first were made,beginning on Feb.22,2014,which was filed on March 12,2014,with a "Entry Of Requests For Disclosure Of Discovery".Next,on April 04,2014,Bill filed a "Motion For Leave To Be Relieved Of Electronic Copy Requirments"...which was granted in the Judgment Entry of Aug.01,2014.Along with that motion for leave, Bill filed a Request For Admissions and Written Interrogatories,on Aug.04,2014,(6 pages).Then,on April 10,2014,Bill filed a "Motion For Order To Compel Disclosure Of Discovery".Lastly,on May 12,2014, Bill filed a "Motion For Order To Compel Disclosure...and To Deem The Request For Admissions---As "ADMITTED".

Therefore,all the above discovery requests were submitted far ahead of the Motion For Summary Judgment,which was not filed until April 21,2014...two months after the first discovery requests were already submitted and filed.30 days was given to Defendant's to comply,and they never did comply,nor did they file requests for extentions of time or objections.

22.

So—on May 02,2014,Bill filedtwo documents..."Objection To A Motion To Strike Affidavits For Improper Form" and "Opposition To Motion For Summary Judgement...with Reply To Opposition For Default Judgment"...all submitted under notary affidavit,and again attatched the request for admissions and written interogatories,and it was also under notary as well.Establishing the necessary specific facts of genuine issues in dispute,which is to defeat a summary judgment as a matter of law.See,LUJAN V. NATIONAL WILDLIFE FEDERATION,497 U.S. 871,888-89 (1990);ANDERSON V. LIBERTY LOBBY,INC.,477 U.S. 242, 248 (1986);BEARD V. BANKS,126 S.Ct. 2572,2578 (2006).Furthermore, the burden of showing that no genuine issue exists as to any material fact falls upon the party moving for summary judgment.HARLESS V.WILLIS DAY WAREHOUSING CO.,54 Ohio St.2d 64 (1978);MITSOFF V. WHEELER,38 Ohio St.3d 112,115 (1988).Defendant's did notshow that,and in fact Bill showed to the contrary,in his opposition with exhibits,under affidavit.

Under U.S.Supreme Court precedence,summary judgment may be granted only after the non-moving party has had an"adequate time for discovery"CELOTEX CORP. V. CATRETT,477 U.S. 317,322 (1986).See also, VAUGN V. U.S.SMALL BUSINESS ADM.,66 F.3d 1322,1328,n.1 (6th.Cir.1995); JEFFERSON V. CHATTANOOGA PUBLISHING CO.,375 F.2d 461,463 (6th.Cir. 2004);INFORMATION HANDLING SERVICES V. DEFENSE AUTOMATED PRINTING SERVICES,338 F.3d 1024,1032 (D.C.Cir.2003).How much more so should that law apply,when discovery requests were already filed,[before] the summary judgment request!

In light of all the above,the trial court erred in granting a summary judgment.Moreover it doubly erred,when by the time the summary judgment was granted,the Defendants had already "ADMITTED" the 26 facts set forth in requests for admissions as a matter of law. See,Error Five,below.

ERROR TWO:(TRIAL COURT ERRED IN APPLYING THE "AFFIRMATIVE DEFENSES" OF "STATUTES OF LIMITATIONS" AND "ESTOPPEL" OR "RES JUDICATA",TO THE BENEFIT OF DEFENDANT'S,WHERE THEY "WAIVED/FORFEITED" THEM BY FAILING TO RAISE SUCH IN THEIR ANSWER OR AMENDMENT TO THE RESPONSIVE PLEADING.

The Defendant's failed to ever raise the defenses of statute of limitations,or res judicata,etc.,in their answer.Neither did they

23.

ever move for leave to file amendments to their pleadings under Civ. R.15.To do so now,after the time expired for such a timely request, they'd have to show "excusable neglect" under Civ.R.6(B)(2) to make it valid.HUFFER V. CICERO,107 Ohio App.3d 65,72 (4th.Dist.1995),citing MILLER V. LINT,62 Ohio St.2d 209 (1980).They could never meet that requirement,and as such,they have irreversibly "waived/forfeitted" all affirmative de3fenses listed in Civ.R.8(C).Affirmative defenses are waived if not brought in the answer to the complaint.STATE EX REL. THE PLAIN DEALER PUBLISHING CO. V. CLEVELAND,75 Ohio St.3d 31 (1996); GUESS V. WILKINSON,123 Ohio App.3d 430 (10th.Dist.1997);MAYS V. KROGER CO.,129 Ohio App.3d 159 (12th.Dist.1998);EVERHOME MORTGAGE CO. V. BEHRENS,2012-Ohio-1454,¶12 (11th.Dist.2012);NEEDLES V. RAITZ,2012-Ohio-5021 (Oct.2012);TAYLOR V. MIRIDIA HOSPITAL,142 Ohio App.3d 155 (2000);THROWER V. OLOWO,2003 Ohio App.LEXIS 1936,at P.23-24 (8th. Dist.2003)...all holding that motions for summary judgments nor motions to dismiss are not the proper method to assert affirmative defenses... be it res judicata,estoppel,statutes of limitations,or any defense set forth in Civ.R.8(C),and the failure constitutes waiver.See also, WOOD V. MILVARD,132 S.Ct. 1826,1832 (2012)..."an affirmative defense, once forfeited,is excluded from the case,and as a rule cannot be asserted on appeal?And the court may not unilaterally raise the defense for them.THROWER,Supra at P.24;GREENLAW V. U.S.,554 U.S. 237,243-44 (2008)...affirmative defenses are not self-executing.

Specifically as to the statutes of limitations,which was applied to deny everything,"the staute of limitations is waived if not raised in the pleadings or by an amendment to the pleadings". JIM'S STEAK HOUSE,INC.V. CLEVELAND,81 Ohio St.3d 18,20 (1998);BRENNING V. BLUE RIBBON HOMES,2007 Ohio App.LEXIS 1230,at P.76 (6th.Dist. 2007)...making clear that a motion is not a "pleading",as Civ.R. 7 makes clear.And the trial court erred in applying ANY AFFIRMATIVE DEFENSES.See,"Defendant's Answer",filed Oct.14,2013.Not listing the defenses the court applied.

ERROR THREE:(TRIAL COURT ERRED IN FAILING TO GRANT THE MOTIONS TO COMPEL DISCOVERY DISCLOSURES,WITH DISCOVERY REQUESTS PENDING[BEFORE] the SUMMARY JUDGMENT WAS FILED.

In light of errors one and two above,the trial court clerly violated due process by failing to grant the several motions to compel disclosure of discovery.The requests for discovery were filed before

24.

the motion for summary judgment,infact far before;Pursuant to Civ. R.26(A),"Parties may obtain discovery by one or more of the following methopds:..written interrogatories;production of documents;...and requests for admissions"..."the frequency of use of these methods is not limited".When clear failures to respond occurs,"a party may move for an order compelling discovery",Civ.R.37(A).Plaintiff moved for such an order on April 10,2014,and again on May 12,2014.The failure of the court to afford these compulsory rights to Plaintiff violated the due process clause of OHIO CONSTITUTION,Article I,§16,and U.S. CONSTITUTION,14th.Amendment,and squashed the very right to redress. That is due to the fact that these "established state proceedures", and state statutes,rules,and policies,creates a "liberty and property Interest" to the Plaintiff.See eg.,WILKINSON V. AUSTIN,545 U.S. 209, 221 (2005);PAUL V. DAVIS,424 U.S. 693,711 (1976);CLUB ITALIA SOCCER & SPORTS ORG. V. CHARTER TOWNSHIP OF SHELBY,MICHIGAN,470 F.3d 286, 296 (6th.Cir.2006).

ERROR FOUR:(TRIAL COURT ERRED IN DETERMINING THE ISSUES OF INFLICTION OF EMOTIONAL DISTRESS,THE BREACH OF IMPLIED-CONTRACT,ABANDONMENTS, GRANDPARENT RIGHTS,AND OTHER DISPUTED FACTS,WHICH MUST BE DETERMINED BY A JURY IN A TRIAL.

Due to there being a demand for jury trial,the trial court was not at liberty to determine facts without those facts being presented to a jury.Even if no jury trial was requested,the court still was not at liberty to make a rush to judgment about disputed facts before discovery was had.Here,the trial court rushed to judgment, by granting a summary judgment,without even firstly having all the facts before it,(which could occur only through discovery).The OHIO CONSTITUTION,Article I,§5;Civ.R.38;and U.S.Constitution,Seventh Amendment,"the right to trial by jury shall be inviolate",creates a [right] to jury trial.Even aside from that,however,it is counter to law to determine facts,without first having those facts developed and before it,and to determine those facts by abandoning overriding principles of law regarding "discovery" and compulsory process'.Which also violates due process of law as well.

ERROR FIVE:(TRIAL COURT ERRED IN FAILING TO DEEM ALL 26 FACTS SET FORTH AS REQUEST FOR ADMISSIONS,AS "ADMITTED",WHERE DEFENDANTS FAILED TO FILE ANY RESPONSES AT ALL,FAILED TO OBJECT,AND FAILED TO FILE FOR EXTENTION OF TIME.

25.

On April 04,2014,Plaintiff filed requests for "Admissions", setting forth 26 facts as admissions.The record will reflect that Plaintiff actually filed these in the court,and sent them to Defendant's counsel several times.Plaintiff requested a response within 30 days.Never once did Defendant's file objections,nor any type of responses,or extentions of time,until a belated attempt via Memorandum Contra filed on May 21,2014.And therein the Defendant's are clearly in error,as a matter of law.They asserted that the motion for summary judgment somehow tolls the time to respond to discovery,and further allege that since the motion to be relieved of electronic copy requirements was not yet granted,that excuses the need to comply with discovery.On June17,2014,Plaintiff filed a Reply to their motion contra. Showing,inter alia,that under the "Staff Notes" of each rule is provided the answers to their assertions.Under Civ.R.33,Interrogatories,Staff Notes (July 01,2009 Amendment),"a responding party served with a printed copy of interrogatories cannot rely on the failure to receive an electronic copy as reason to do nothing and simply disregard the response time",(sic.).And under Civ.R.36,Admissions,Staff Notes (July 01,2009 Amendment),states,"if before the designated period has expired,the responding party requests that the period be enlarged pursuant to R. 6(B) because the requesting party has not provided an electronic copy, that reason shall constitute good cause".However,Defendant's did not file for enlargment,nor file any type of response,and instead DONE NOTHING AT ALL.

The key part is this:Under Civ.R.36(C)Staff Notes,(July 01, 2005 Amendment),states,"Civ.R.36 imposes a virtually self-executing sanction,ie.,admission by default,on a party that fails timely to respond.See generally,CLEVELAND TRUST CO. V. WILLIS,20 Ohio St.3d 66 (1985)",(sic.) See also,SWITCH MUSIC.COM V. U.S. MUSIC CORP.,416 F.Supp.2d 812,817 (C.D.Cal.2006)...admission by default is "automatic", under Civ.R.36(A)(1).In this case,the Plaintiff even moved for such order deeming "ADMISSIONS",on May 12,2014.And the court erred in failing to deem it as such.Actually by the time the court ruled on the summary judgment,Defendant's had already "Admitted",by default of Civ.R.36,enough facts to actually instead grant a summary judgment, or partial summary judgment,TO THE PLAINTIFF.In fact,in Plaintiff's Opposition to Summary Judgment filed on May 02,2014,Plaintiff requested such a judgment in his favor...which was clearly a "counter-Motion For Summary Judgment".

26.

Thereafter the "admissions",it would be the sole provence of a "jury" to determine what weight to give to those admitted facts, and to whether it rises to a violation of law.At any rate,this could be determined only via a trial after discovery has closed.Questions of fact,are for the trier of fact,not for the court,unless for ample legal cause the court sits as the "13th.juror".Compare eg.,STATE V. DeHASS,10 Ohio St.2d 230 (1967);STATE V. THOMPKINS,78 Ohio St.3d 380, 387 (1997);LAVENDER V. KURN,327 U.S. 645,66 S.Ct. 740 (1946);GULP V. FEDERATED DEPARTMENT STORES,11 Ohio App.2d 165 (2nd.Dist.1965).

ERROR SIX:(TRIAL COURT ERRED IN DISMISSING THE MATTERS OF CRIMINAL COMPLAINT'S DONE UNDER AFFIDAVIT.

To the extent that several of Plaintiff's claims encompasses not only tort law,but also criminal complaints as well,the trial court erred as a matter of law by summarilly dismissing them.Under clear law of this State,and of the District,O.R.C.§§2935.09,2935.10, "affords the reviewing official only two options:(1)issue a warrant,or (2)refer the matter to the prosecutor for investigation".STATE EX REL.BROWN V. HARDEN,JEFFERIES,2012 Ohio App.LEXIS 1328,at P.9 (4th. Dist.2012),citing STATE V. SLAYMAN,2008-Ohio-6713,at ¶21 (5th.Dist. 2008).If a citizen complies with part (D) of §2935.09,",that is sufficient to "initiate the arrest or prosecution of a person charged with committing an offense".STATE V. MOUSI,129 Ohio St.3d 325,326 (2011). Under the plain wording of §2935.09(D),"A private citizen having knowledge of the facts who seeks to cause an arrest or prosecution ...may file an affidavit charging the offense committed".Clearly there is no requirment that the entire document or proceeding is labelled as "Criminal complaint" in order for it to be a valid affidavit of criminal complaint,when the citizen sets forth facts under affidavit/notary detailing the elements of a criminal statute,and citing that statute.To say that,would be to "add to" the words of the statute,which Ohio law prohibits.STATE V. TODDY,2001 Ohio App. LEXIS 1549,quoting STATE V. TANIGUCHI,74 Ohio St.3d 154,156 (1995).

Obviously if prosecution done their express duty,a large portion of Plaintiff's claims would be remedied,and would not have even occured in the first place.And the court erred in dismissing them,even if dismissal was appropriate for the civil claims,(and it clearly was not as shown herein).

CONCLUSION

WHEREFORE the judgment of the trial court should be REVERSED, with an order to grant at least partial-summary judgment [in favor of Plaintiff],and the matter set for jury trial. (**)

Respectfully Submitted,

Sept.02,2014/ William H. Evans,Jr.

William H. Evans,Jr.
#A 485-686
Ross Correctional Inst.
P.O.Box 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 774-7050

Plaintiff-Appellant,Pro Se

PROOF OF SERVICE

I certify that on this 02 day of Sept.,2014,I sent a copy of the foregoing by U.S.Mail,at:

DAVID A. BECK,(0068343)
-(of,Marche,Beck,& Beck,LLC)-
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
(740) 353-3113
Counsel for Defendant's-Appellees

William H. Evans,Jr.

**NOTE: The docket of the trial court seems to list only one document being filed on May 02,2014.i.e."Objection to & Motion To Strike Affidavit's For Improper Form".

To be sure,[two] separate documents were mailed to the court, both dated April 28,2014...filed on May 02,2014.[both] documents were mailed IN THE SAME POSTAGE PAID ENVELOPE.

Therefore,this appeals court should have filed herein,the above mentioned "Objection To & Motion To Strike"---[AND]---an "Opposition To Motion For Summary Judgment/And Cross-Motion To Motion For Judgment On The Pleadings/ With Reply To Opposition For Default Judgment".Bothof these documents,being mailed in the SAME envelope,should be filed on the same date of May 02,2014.Plaintiff wishes to ensure there is no mistake:The "Opposition To Motion For Summary Judgment"...was EIGHT PAGES (8) IN LENGTH,(and had also an six (6) page exhibit attatched thereto)(14 pages total,as an"Opposition To Motion For Summary Judgment").

A praecipe to Clerk was filed with the Notice of Appeal in this case,ordering [ALL FILINGS IN THE TRIAL COURT],[ENTIRE RECORD].Plaintiff-Appellant has no access to view the 4th.District's web-site,to ensure all is filed.If it is not,then it is hereby requested that the Clerk forthwith do so,and that this appeals court ensure the same.

William H. Evans,Jr.

22.

COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY, OHIO

WILLIAM H. EVANS, JR.
Appellant

App.Case No.14-CA-3647
Trial Case No.13-CIH-166

VS.

CATHI J. EVANS, ET AL
Appellee's

REPLY BRIEF IN ABSENTIA

The Appellant (Plaintiff) filed his Brief on Sept.08,2014.However,Appellee's failed to ever file a Brief,and on Oct.14,2014,this court's Magistrate issued an Order giving Appellee's 10 days by which to show good cause for delay and to file their Brief with that motion.Appellee's failed to ever comply with that order,and has forfeited their rights under App.R.18(C).

While there is no prescribed rule allowing for a Reply Brief(in absentia),there are no rules specifically prohibiting it neither...while there is a right to file a "Reply Brief" under App.R.18(A).Appellant only wish'es to provide the court with information's of law which he would have provided had they filed their Brief.It is asserted here that the ONLY plausible argument Appellee's could have brought would be on the allegations that there is no avilable Ohio remedy for Plaintiff's claims,or that the General Division is not the proper venue for certain claims,or to assert the already forfeited affirmative defense's. However,all of those argument's would have been a legal-fiction and unavailing.

POST-ANSWER SUMMARY JUDGMENT IS NOT A VALID WAY TO ASSERT AFFIRMATIVE DEFENSE'S

A motion for summary judgment,nor any other type of motion,is not a valid way to preserve affirmative defenses that were not raised in the "Answer".**TAYLOR V. MERIDIA HURON HOSP.,142** Ohio App.3d 155 (8th.Dist.2000);**EVANS V. SOUTHERN OHIO MEDICAL CENTER,**109 Ohio App.3d 250 (4th.Dist.1995);**PINOTTI V. PINOTTI,**2003 Ohio App. LEXIS 2790,at P.12 (6th.Dist.2003);**SAVOY V. UNIVERSITY OF AKRON,**2012 Ohio App. LEXIS 1731 (9th.Dist.2012);**CARMEN V. LINK,**119 Ohio App.3d 344 (1997);**JOHNSON V. LINDER,**14 Ohio App. 3d 412 (1984); Civ.R. 8.

STATUTE VIOLATIONS ARE ACTIONABLE AS A CIVIL TORT CLAIM

O.R.C.§2307.60 (A)(1),states,"Anyone injured in person or property by a criminal act has,and may recover full damages in,a civil action".See eg.,**T.P. V. WEISS,**2013 Ohio App.LEXIS 1290 (5th.Dist. 2013)...(damages awarded to plaintiff for criminal violations).This is available regardless of whether the State chooses to prosecute or not,and even an acquittal is not a bar to the civil remedy.Nowhere does that statute proscribe or bar a civil remedy simply because the State never prosecuted.The same reasoning applies also in other state's.See eg.,**WILLIAMS V. DICKENSON,**9 So. 847,849 (Fla.1896),citing **HOAK V. MINNICK,** 19 Ohio St.462.See also,**BUNDY V. MAGINESS,**18 P. 668 (Cal.);**KEMPER BREWING CO. V. ROLLAND,**96 Ohio St. 432 (1917);**CALL V. G.M. SADAR EXCAVATING,**68 Ohio App.2d 41 (6th.Dist.1980).This principle applies to [ANY] statute,as long as the plaintiff is a member of the class of person's the statute was designed to protect, regardless of whether it is a criminal statute or not.See,**SIPCHNIEWICZ V. MAR-CAM CORP.,**259 Or.583,488 P.2d 436 (1971);**THOMAS V. BALTIMORE & O.R. CO.,**19 Md.App.217,310 A.2d 186 (1973);**DISTAD V. CLEIN,**633 P.2d 167 (Wyo.1981);**LOCKHART V. LOOSEN,**943 P.2d 1074 (Okla.1997);**DRAKE V. FENTON,**237 Pa. 8,85 A.14 (1912); **MARTIN V. HERZOG,**228 N.Y. 164,126 N.E. 814 (1920).

ALIENATION OF AFFECTION AND ENTICEMENT OF CHILD OR PARENT IS ACTIONABLE

When one parent turns a child against the other parent,this states a claim in tort,for loss of society with the child and mental distress.The injury the father sustains is the loss of the child,the insult to his feelings ,and the heart-rending agony he must suffer in destruction of his dearest hopes,and the irreparable loss of that comfort and society which may be the only solace of his declining age.See,**SIRCLE V. GLEASON,**9 Wn.App.13,510 P.2d 250,252 (1973),citing **THE LAW OF TORTS,1 F. HARPER & JAMES,§8.5 (1956).** The same applies when a parent has been alienated/enticed from the child.**MILLER V. MOYSON,**228 Minn.400, 411,37 N.W.2d 543,549 (1949)..."Enticement of a mother is a grievous and tragic wrong".All relevant case's have held that,just because a right has not been yet recognized by precedence,is not a conclusive reason for denying a remedy.

29.

In **JOHNSON V. LUHMAN**,330 Ill.App.558,71 N.E.2d 810,812 (1947),they held that a cause without precedence is not a cause without remedy,and that the common-law was sufficiently flexible enough to protect what are regarded as family rights under our social standardsand conceptions of the family unit. Quite analogous to the Ohio Constitution,Article I §16...the Illinois Constitution,Article II §19,was held by the above **JOHNSON** case to broadly apply to recognize where the family relationship has been disrupted,there are "injured members"...and that these members are entitled to protect their family rights.id. at 813.Not that Plaintiff's claims in the instant case are without precedence,but as a matter of right even if they were not,they still state claims upon which relief can be granted as a matter of law. The novelty of an asserted right and the lack of precedent are not valid reasons for denying relief to one who has been injured by the conduct of another.**FUNK V. U.S.**,290 U.S. 371 (1933);**DAILY V. PARKER**, 152 F.2d 174 (7th.Cir.1945);**RUSSICK V. HICKS**,85 F.Supp.281 (W.D.Mich.1949);**MILLER V. MONSON**,228 Minn.400 (1949).

In light of all the above,the Domestic Relations Division,nor the Probate Division,is [not] the proper forum for the claims,which regard largly criminal statute violations sounding in tort.And rather than piece-meal or bifurcate the claims and trial in several different courts,it makes more feasible sense to try it all in [General Division].At any rate,it would only be fair if this appeals court allowed the "admissions" and "waivers" to stand as is,and transfer it to such different divisions if it finds it necessary.However,Appellant asserts that the General Division is the most viable option,with all claims consolidated therein.

Respectfully Submitted,

Nov.07,2014/ William H. Evans, Jr.

WILLIAM H. EVANS,JR.
#A 489-686
Ross Correctional Inst.
P.O.Box 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 7740 7050
Appellant,Pro Se

PROOF OF SERVICE

I certify that on this 07 day of Nov.,2014,I sent a copy of the foregoing by U.S.Mail,at:

DAVID B. BECK (0068343)(Counsel of Record)
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
(740) 353-3113
Counsel for Appellee's

William H. Evans, Jr.
Appellant,Pro Se

3D.

COURT OF APPEALS OF OHIO

FOURTH APPELLATE DISTRICT

SCIOTO COUNTY, OHIO

WILLIAM H. EVANS, JR.
Appellant

App.No.14CA3647
Trial No.13-CIR-166

VS.

CATHI J. EVANS, ET AL
Appellee's

APPLICATION FOR RECONSIDERATION
UNDER APP.R.26(A)

On Jan.30,2015, this court AFFIRMED this case. Appellant ("EVANS") hereby moves for reconsideration for the following reasons:

Evans asserts that the Decision entered in this case is [completely] contrary to law, and is steeped in obvious prejudice and bias by all judge's of this court against Evans. The very first sentence of the Decision as filed on Jan.30,2015, states that Evans, "is a convicted murderer serving 15 years to life in prison". Decision, ¶1, No.14CA3647 (4th.Dist.). Again, at ¶8, this court states, "Evans brutally beat and fatally strangled a female acquaintance". There is absolutely no legitimate basis for such recitations by this court of Evans' conviction, other than pure prejudice, and is an obvious sign that the efforts by Evans to obtain justice in the federal courts from the U.S.Marshal Service, is getting under the skin of the members of the Ohio Judiciary. This is a civil suit against private family members of Evans, but this court cannot seem to get it off it's mind about the Incus pecus murder conviction which this very court affirmed. Next, this court callously attempts to rub salt into wounds, by harping about purported violations of protection order's which the State failed to prosecute or bring formal charges upon. Moreover, the purported violations were actually an attempt by Evans to contact his Son's, and was a point to the underlying civil action brought by Evans.

Evans has a legal right, established by the legislature, to a civil action for criminal violations, pursuant to O.R.C.§2307.60. This right is granted by the legislature, and the institution of criminal proceedings by the state is not a prerequisite to the civil remedy. This has been Ohio law since the 1800's. HOWE V. MINNICK, 19 Ohio St.462,465, citing ROSEN & MOCHSER R & R V. DAVIS, 1 Gray 63 (Mass.). This court totally ignored that statute in the Decision. Evans stated claims for relief, cognizable under Ohio tort laws. That is all he was required to do. He illustrated several unresolved facts, which precludes summary judgment as a matter of clearly established federal, and state, law. Evans is not required to prove claims at the pleading stage, and has an absolute right to a jury trial. A violation of a criminal statute is prima facie evidence of negligence, under §2307.60. In the criminal statutes, the legislature creates a presumption of strict liability for it's violation. To say that no claim has been stated, is to overide the legislature, is a reproach to the sense of justice, is a perversion of what is morally right, and is complacy of the violations of the R.I.C.O. Act by the Ohio Court's which Evans has complained. That business is it of this court's, to stand in the way of a person seeking justice against another family member, within the realm of the law. This court has shown that it is not capable of being a "neutral arbiter of the matters the parties present". You done this in Evans' criminal case, you done it in his attempted Post-Conviction petition, and now you are compelled to do the same in a civil action between private parties. That is the epitome of what the word "Corruption" means. It also violates state and federal criminal laws(18 U.S.C.§§241,242, inter alia), as well as A.B.A., MOD. CODE OF JUDICIAL CONDUCT, R.2.11, and Ohio Jud.Cond.R.2.11, in failing to recuse yourselves. To establish a violation of 18 U.S.C.§1962(c), a Plaintiff must show, (1)conduct, (2)of an enterprise, (3)through a pattern, (4)of racketeering activity. SEDIMA V. IMREX CO., 473 U.S. 479,496 (1985). "Enterprise" means also a government agency or unit. 18 U.S.C.§1961; U.S. V. ANDERSON, 660 F.2d 25,30-35 (3rd.Cir.1981), cert.denied, 455 U.S. 910,945 (1982). Cf.also, O.R.C.§2923.31(C). The judge's of this court has caused itself to meet all 4 elements, in conjunction with other judge's across Ohio.

Respectfully Submitted,

Feb.05,2015 William H. Evans Jr.

WILLIAM H. EVANS, JR., Pro Se

PROOF OF SERVICE

I certify that on this 05 day of Feb., 2015, I sent a copy of the foregoing by U.S.Mail, at: David B. Cox, 800 Gallia St., Suite 800, Portsmouth, Ohio 45662. William H. Evans Jr.

31

COMMON PLEAS COURT
SCIOTO COUNTY,OHIO
GENERAL DIVISION

04-04-14

WILLIAM H. EVANS,JR.
Plaintiff

VS.

CATHI J. EVANS,ET AL
Defendant's

Case No. 13-CIH-166
Corbin,J.
-(Request for ADMISSIONS)-
-(Jury Trial Requested)-

REQUEST FOR ADMISSIONS
-AND-
WRITTEN INTERROGATORIES

Plaintiff is uncertain as to the desired proceedure in this court,or of whether it is common practice to file discovery requests initially.But due to his incarcerated status,it seems more appropriate to "file" it all on court record,so as to eliminate a potential game of "cat & mouse" where Defendant's may allege they did not receive the discovery requests,etc.In that same vein,Plaintiff filed discovery requests,also,on about March 06,2014 (which to date Plaintiff has not received a response on from Defendant's).

Pursuant to Civ.R.33 & 36,Plaintiff hereby makes the following requests for "ADMISSIONS" and also propounds "INTERROGATORIES":

REQUEST FOR ADMISSIONS

(1).Margaret remarried after the death of her first husband,in about 1995...to a Howard Sanford.

(2).William was adopted by Margaret and William Evans,Sr.,when William, Jr. was @6 months old in 1964.William was their ONLY child.

(3).William,Jr. was listed even since early chilhood as the ONLY heir to the will of Margaret and William,Sr.Such details were set out by an attorney,that even in the event that they died in an accident,William,Jr. would be taken care of by Bernice and James Cornett of Illinois,and then the money would turn over to William,Jr. upon reaching adulthood.

(4).From the adoption in 1964 on forward,William,Jr. was the apple of his fathers eye,and also of his mother,and there was NOBODY who took precedence before William,Jr.

(5).In about 1987,William,Sr. purshased the house at 1722 Charles St.,Portsmouth,Ohio as a gift- for William,Jr. and his family.The

32.

house,however,remained legally in the names of his father and Margaret because Cathi and William,Jr.were also receiving food stamps and other welfare assistance,and the house was kept out of their names to avoid being stripped of public assistance (incl.College Grants), (and,incl.Social Security benefits).

(6).In 2001,after William got out of prison,after his father had already died in 1995,Margaret then officially signed the deed over to William,Jr. and Cathi.This was in keeping the wishes of his father.

(7).In 2001,Margaret's husband,Howard Sanford,told William,Jr. over the telephone that,"if you don't act right with your mother,I'll put you right back where you came from"(meaning Prison).Margaret,and Cathi were aware of these statements,as was our two son's.This created immediete conflict,and served as a dividing rod between Margaret,William, Jr.,Cathi,and the son's.Essentially they ALL sided up against William, Jr. in favor of Sanford.

(8).By the time William,Jr. got out of prison in 2001,Sanford had already,with the assistance of Attorney Mike Mearan,transferred monies,properties,etc. into the primary ownership of Sanford.They (Margaret,Sanford,& Mearan) also altered the"will" and/or desroyed or spoliated it.All of these were to go to William,Jr. ultimately.

(9).Sanford's daughter Theresa Stone used to be a secretary for Attorney Mike Mearan during all that time,and stood to also gain from the changes.

(10).In 2004,Howard Sanford fired off a pistol over the head of William,Jr.,while in front of his mother's house.William was merely trying to speak to his mother,and Sanford refused to allow it.William was at that time,homeless,and being drove to their house in a taxicab.Being in the city,the bullets could have easily came down upon someones head and killed them (what goes up,must come down,and with the same force and velocity that it went up).The police arrived, but failed to charge anyone with the discharge of a firearm,despite efforts by William to press charges.

(11).In 2004,at the beginning of a hearing for a protection order, filed by Margaret and Sanford,(Case No.04DV0298),William,Jr. asked his mother (Margaret),"Mom are you going to let me be killed?".And Margaret replied,"well,Bill,if thats what it takes to make you leave us alone".[meaning,YES,she'll have him killed if need be].

(12).During William's stay in prison,from1994 to 2001,Margaret and

Cathi(both) assisted William financially and ensured that he had plenty of money to survive on...meaning he was able to spend at least roughly $150.00+ per month at commissary.They also visited him regullarly,about once every two weeks.They accepted phone calls from him every day.Trhoughout all that time,William had ready contact with his two son's (visits,letters,phone).

(13).Throughout the years William was in prison,Cathi became more equivelent to a"daughter" to Margaret,and William proportionally became more and more like a son-in-law to Margaret.Cathi was more important.

(14).In about Feb.-April,2002,Cathi at one point placed a large 12 inch knife in a drawer under her clothes in the bedroom.The next day,Cathi disappeared,leaving Brandon & Ben & William home, and checked herself into a psychiatric ward of a hospital in Kentucky or W.Virginia.Cathi stated that the knife was placed there because she contemplated murdering William in his sleep.

(15).Numerous physical altercations occured between Cathi and William between 2001-2002.Cathi also punched,kicked,and threw items at William.

(16).Between 2001-2002,Cathi repeatedly stood in the way of William's attempts to discipline his son's.This only worsened the conflicts. William would tell his son's,"don't do this or that".And Cathi would tell them,"it's alright to do it.Your dad is just paranoid from being in prison".Once this led to Ben being accosted by an attempted sexual predator, because he felt no need to listen to his dad.

(17).William was homeless between 2003-2004,and often slept out on the riverbank,or whereever,in a tent,and got food at churches,and both Margaret and Cathi were well aware of this.Neither would help him.

(18).William has Bi-Polar Affective Disorder,and has been diagnosed as such since about 1984 or 1985.Both Margaret and Cathi were well aware of that fact.They were also well aware that William struggled with bouts of SEVERE depression,and that not having medications,food, or shelter would drastically worsen that fact.

(19).Both Margaret and Cathi had protection orders against William: Case No.# 04DV0298 & #02DV0564.Even when William only attempted to contact his son's,Cathi or Margaret would report that William had violated those orders (because his son's were also living at those addresses).There were never once any protection orders to keep him from his son's.

(20).Margaret,and separately Cathi,have essentially caused his son's

34.

to have hard-feelings against William.
(21).William cannot,by requested order from Margaret and Cathi,contact them,and they will not allow communications at all from William.
(22).Pursuant to O.R.C.§3105.171,the marital property was to be divided "equally",as a matter of law.And Civ.R.8 (C) now bars any potential defense of res judicata,because it must have been brought as an affirmative defense in the "Answer",as a matter of law.
(23).William was NEVER given photographs of any family members,including even of himself as a child...and Defendant's to this day refuse to help him acquire such.
(24).Margaret and Cathi were both aware that William was being housed at S.O.C.F.,and aware of his pleas for help and alleging he's almost dead.And,that SEVERAL of Cathi's relatives work at S.O.C.F.(eg., Buffington,Hill,etc.).
(25).To the date of this request,Margaret nor Cathi have made any efforts whatsoever,to remedy any of the things listed in the complaint. As a matter of law,damages are accruing daily.William has heard NOTHING.
(26).Margaret and Cathi have recently made it clear to their Attorney, that they have "no desire to communicate with[you]now <u>or in the future</u>".

Pursuant to Civ.R.36,it is hereby requested that direct and specific,detailed or complete answers be issued for each above request. It is further requested that the admissions be provided to Plaintiff no later than 30 days of receipt of this request.These above requests for admissions are directed to [BOTH] Margaret and Cathi equally.

<u>WRITTEN INTERROGATORIES</u>

(1).What is the complete address,and telephone number,and e-mail address,of each of Plaintiff's two son's:(Brandon Matthew Evans & Benjamin Andrew Evans)?

Amongst other reasons,even if they decide they want no relationship with their father,Plaintiff intends to try to work things out with them,and also intends to propound interrogatories to them.Also this is needed for the sake of any grandchildren (present or future).
(2).Does Plaintiff have any grandchildren?
(3).What is the birth dates and names of grandchildren?
(4.)What is the name,address,and telephone number of the [mother] of any grandchildren?
(5).Why has Plaintiff not been notified about the status of his

35.

son's lifes,and of any grandchildren?
(6).Is Howard Sanford still living?And is he still married to Margaret?
(7.)Is Margaret now in a relationship with another man,and if so, are they now married,and what is his complete name?
(8).Is Cathi now in a relationship with another man,and if so,are they married,and what is his complete name?

**6 and 7 and 8 above,is needed to propound future interrogatories to these mystery persons.The request for documents,("will","BirthCert",etc)is still needed.
(9).Why did Margaret,abandon her only child?And why did she go so far as to ensure that he could never contact his son's? Why does this continue to date?
(10.)What is the precise reason(s) that Margaret and Cathi utterly refuses to communicate with William?Even in the name of "resolution", why do they refuse?Do they realize that this is only increasing damage?
(11).Why is Margaret so willing to give handouts to,as example,"crack-head" families in the projects of the black neighborhood,but yet will not help her only child?[She always took William with her each year when she was a teacher,to help her deliver presents to kids families from her classes],[1977-1982].
(12).Is Cathi still the sole legal owner of the house at 1722 Charles St.,Portsmouth,Ohio?
(13).Did'nt Margaret tell William in 2000,right before he got out of prison,that she would give to him the property she owns over in Kentucky (about 65+ acres,with house and pond)?Does she still own that property?

Pursuant to Civ.R.33,it is hereby requested that direct and specific,detailed or complete answers be given for each above question.It is further requested that the answers be provided to Plaintiff no later than 30 days of receipt of this request.These above interrogatories are directed at [BOTH] Margaret and Cathi.

All responses [must] be in hard-copy,paper format ONLY, (no electronic discs,etc.).

Respectfully Submitted,

April 02,2014/ William H. Evans Jr

WILLIAM H. EVANS,JR.
#A 489-686
Ross Correctional Inst.
P.O.BOX 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 774-7050
Plaintiff,Pro SE

36.

PROOF OF SERVICE

I certify that on this 02 day of April,2014,I sent a copy of the foregoing by U.S.Mail,at:

DAVID B. BECK (0068343)
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
(740) 353-3113

Counsel for Defendant's

William H. Evans, Jr.

37.

COMMON PLEAS COURT
SCIOTO COUNTY, OHIO
GENERAL DIVISION

WILLIAM H. EVANS, JR.
Plaintiff

Case No. 13-CIH-166

Corbin, J.

VS.

CATHI J. EVANS, ET AL
Defendant's

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT/
AND OPPOSITION TO MOTION FOR JUDGMENT ON THE PLEADINGS/
WITH REPLY TO OPPOSITION TO DEFAULT JUDGMENT

Plaintiff hereby opposes the motions and responses filed by Defendant's on April 21, 2014:

DEFAULT JUDGMENT AND GENERAL DENIALS

Defendants oppose the Motion for Default judgment, by reciting Civ.R.8(B), only in part. Under Civ.R.8(B), "Unless the pleader intends [in good faith] to contrevert all the averments of the preceding pleading...the pleader may generally deny all the averments". Under the (OHIO)- Advissory Committee guidlines, 1970..."Rule 8(B) provides that a general denial should not be served unless the pleader intends in good faith to controvert all the averments of the preceding pleading. Therefore, in light of the fact that a pleader is seldom in a position to deny in good faith all alegations in a plaintiff's pleading, a defendant under Rule 8(B) should resort to the specific denial...Rule 8(B) does not substantially change Ohio practice in the use of denial other than to require, more often than not, that a denial be a specific denial rather than a general denial. By generally requiring the specific denials, Rule 8(B) tends to sharpen issues at the answer stage of pleading". (Sic.)

Clearly Defendant's cannot, [in good faith] deny "ALL" of the alegations enumerated in the complaint. And therefore, the requirment is that they should have rendered specific denials. As noted in the Advissory Notes, this is to sharpen the issues at the answer stage. Instead the Defendant's have circumvented the underlying principles and clear road-map of Civ.R.8, by failing to deny. And on that

38.

basis the motion for default judgment was filed.Furthermore,Plaintiff submitted "Requests For Admissions" to Defendant's by U.S.Mail on April 02,2014,which was also filed in this case on April 04,2014. Plaintiff is still awaiting timely response to that within the 30 days.And they will either "admit" the issues or specifically deny them,or otherwise it would be deemed as admitted as a matter of law.Again,Defendant's have attempted to circumvent the plain road-map of Civ.R.8,and as a result this case is being delayed by such evasive tactics.Had they simply given specific answers to the complaint, there would have been no need for requests for admissions and a possible subsequent motion to compel,etc.This case could have been advanced by now.

For all the foregoing reasons,the well-pleaded allegations of the complaint should be deemed as "admitted" and this case should proceed on that basis.Compare,HUFFER V. CICERO,107 Ohio App.3d 65, 72 (4th.Dist.1995);BANK OF N.Y.MELON TRUST V. SHAFFER,2012 Ohio App. LEXIS 3222,at P.33 (11th.Dist.2012),remanded on other grounds,134 Ohio St.3d 1435 (2013);KING VISION PAY PER VIEW V. J.C.DIMITRIS RESTAURANT,180 F.R.D. 332,333-334 (N.D.Ill.1998); AKINS V. TESCO,180 F.Supp.2d 15,17 (D.D.C.2001).

JUDGMENTS ON THE PLEADINGS

To the extent that Defendant's move for judgment on the pleadings,it should be denied.Under Civ.R.12(C),the court accepts all well-pleaded material allegations of the non-moving party as true, and views all facts and inferences in a light most favorable to the non-moving party/plaintiff.VICKERS V. FAIRFIELD MEDICAL CENTER,453 F.3d 757,761 (6th.Cir.2006).Judgment on the pleadings is only warranted where it appears beyond doubt that the plaintiff will be unable to prove any facts to support the claims for relief.ibid.

In light of the requests for discovery,of which a motion to compel disclosure was filed on April 10,2014,at this juncture it could not be rightly adjudged that plaintiff can't prove his allegations to support claims for relief.In fact Defendant's are actively evading discovery requirements.And Defendant's motions should be denied;and ordered to comply with all discovery requests,in timely fashion...and ordered to give [specific] answers.

OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

Defendant's assert that there is no genuine issues of any material fact,and that summary judgment should be granted,under Civ. R.56.

Under U.S Supreme Court guidelines, summary judgment may be granted only after the non-moving party has had an "adequate time for discovery". CELOTEX CORP. V. CATRETT, 477 U.S. 317, 322 (1986); Accord, JEFFERSON V. CHATTANOOGA Publishing Co., 375 F.3d 461, 463 (6th. Cir. 2004). Here, the Defendant's are to date not complying with discovery requests at all, and as a result, Plaintiff has had absolutly no adequate chance for discovery. It appears therefore, that pre-discovery summary judgments should more appropriatly be the exception, rather than the rule. See, VAUGN V. U.S. SMALL BUSINESS ADM., 65 F.3d 1322, 1325, n.1 (6th. Cir. 1995); MILLER V. WOLPOFF & ABRAMSON, 321 F.3d 292, 303-04 (2nd. Cir. 2003); INFORMATION HANDLING SERVICES V. DEFENSE AUTOMATED PRINTING SERVICES, 338 F.3d 1024, 1032 (D.C. Cir. 2003). For these reasons alone, the motion for sum,mary judgment should be denied.

The purpose of summary judgment is to isolate, and then terminate, claims [and defenses] that are factually unsupported. CELOTEX, Supra at 323-24. We cannot even begin to determine anything as long as Defendant's fail to follow the plain road-map of the Civil Rules. In light of all the above, this court should actually render a summary judgment, or at least a "partial summary judgment" under Civ.R.56(D), in the favor of Plaintiff and deem certain facts to have been admitted by Defendant's, and a trial conducted accordingly.

Aparty moving for summary judgment forces the opponent to come foreward with at least one sworn averment of fact essential to that opponents claims or defenses. LUJAN V. NATIONAL WILDLIFE FEDERATION, 497 U.S. 871, 888-89 (1990). This must be done by setting forth "specific facts" of a genuine issue in dispute requiring trial. BEARD V. BANKS, 126 S.Ct. 2572, 2578 (2006). A Fact is "material" if it might affect the outcome of the case. ANDERSON V. LIBERTY LOBBY, INC., 477 U.S. 242, 248 (1986). The burden of showing that no genuine issue exists as to any material fact falls upon the party moving for summary judgment. HARLESS V. WILLIS DAY WAREHOUSING CO., 54 Ohio St.2d 64 (1978); MITSEFF V. WHEELER, 38 Ohio St.3d 112, 115 (1988). In Defendant's motion, they have merely asserted an absence of evidence, and/or an absence of a legal basis to support relief. The above herein makes it clear that the motion was premature, and the Defendant's have evaded discovery requests to date. But to meet the duty of Plaintiff to show that a "genuine issue" of facts are still in dispute, attatched hereto

40.

as Exhibit-A (6 pages),is the pending "Request for Admissions" and "Written Interrogatories",to be made as wholly inclusive to this instant Opposition pursuant to Civ.R.10(C).Therein is more than ample proof that there exists ALOT of factual issues in dispute.Moreover, most of them are in dispute solely because Defendant's have refused to comply with the Civil Rules and Discovery Requests.By failing to give specific answers,they have only delayed/stalled this case,and they've done so on vexatious grounds,because it is not warranted under existing law and cannot be supported by a good faith argument. It serves no purpose other than to delay.And that defines "Vexatious Conduct",pursuant to O.R.C.§2323.52(A)(2).Of which is held as grounds for civil contempt.CHAMBERS V. NASCO,INC.,501 U.S. 32 (1991)...(for engaging in"stall tactics"which are not grounded by supporting law).

The above,along with the attatched Exhibit-A,is grounds to have this court to deny the motion for summary judgment entirely. As Plaintiff has shown that Defendant's motion fails to demonstrate the absence of a genuine issue.See eg.,TORRES-ROSADO V. ROTGER-SABAT, 335 F.3d 1,9 (1st.Cir.2003).And Plaintiff has more than demonstrated unresolved genuine issues,and has done so here by sworn affidavit. Defendant's could have easily met their burden had they been able to file copies of the"will" showing that Plaintiff is the sole heir, or by showing that he has no grandchildren,or by coming forth with statements from his children saying,"we love you dad,and we want to talk to you",or by the Defendant's themselves taking affirmative steps to remedy what they've done.Had they presented any of the above, it would potentially sink Plaintiff's entire claims and make him appear as delusional.The fact is,however,that Plaintiff's allegations are 100% true...and the failure of Defendant's to produce ANY conflicting evidence or facts speaks volumes about Plaintiff's contentions that they are trying to conceal the truth.Rules of "discovery" forbids such a concealing.And this case must move on,and the motion for summary judgment must be denied.

PLAINTIFFS CLAIMS ARE LEGALLY VALID

In the motion for summary judgment,Defendant's purport to summarize or reduce Plaintiff's claims to a single page,5-point averment of facts.Obviously that is not an exhaustive list of claims, and is an attempt to trivialize the damage that Defendant's have caused. They go on to assert that "Defendant's did not intend to cause emotional

41.

distress and did not know that any of their actions would result in such emotional distress to the Plaintiff".(Motion,P.4).However the fact that Defendant's still to date refuse to try to remedy any of it,seems to automatically controvert the allegation that they "did not intend to cause" these things.For they are STILL ACTIVELY CAUSING THE EMOTIONAL DISTRESS,and they are "knowingly" doing so.

STATUTES OF LIMITATIONS

The Defendant's are alleging "statutes of limitations" for the very first time,and are doing so in a motion for summary judgment.They allege it as to the timely filing of the suit as a whole, and they also allege it as to the contesting of the "will".

The "statutes of limitations" is an "Affirmative Defense" under Civ.R.8(C),and when a party fails to bring it in their "Answer" to the complaint,they are deemed to have "waived" that defense.See, STATE EX REL.THE PLAIN DEALER PUBLISHING CO. V. CLEVELAND,75 Ohio St.3d 31 (1996);GUESS V. WILKINSON,123 Ohio App.3d 430 (10th.Dist. 1997);MAYS V. KROGER CO.,129 Ohio App.3d 159 (12th.Dist.1998).See also,SCOTT V. COLLINS,286 F.3d 923,927-928 (6th.Cir.2002)...(holding that it was error for the court to cure the "waiver" sua sponte), citing U.S. V. OLANO,507 U.S. 725,733 (1993),FREYTAG V. COMM'R OF INTERNAL REVENUE,501 U.S. 868,894,n.2 (Scalia,J,concurring).

The same applies to [any] "Affirmative Defense",including the attempts at "res judicata" regarding the redistribution of marrital properties.See eg.,EVERHOME MORTGAGE CO. V. HOWENS,2012-Ohio-1454,¶12 (11th. Dist.2012);FISCHER V. CLOND,2005 Ohio App.LEXIS 1930,at P.23-24 (8th.Dist.2005); NEELES V. KATZ,2012-Ohio-5021 (Oct.2012);TAYLOR V. MIRIDIA HOSP.,142 Ohio App. 3d 155 (2000).

To be clear,"a party shall set forth affirmatively...statute of limitations...and any other matter constituting an avoidance or affirmative defense...the statute of limitations is waived if not raised in the pleadings or by an amendment to the pleadings".JIM'S STEAK HOUSE,INC. V. CLEVELAND,81 Ohio St.3d 18,20 (1998).That is quite clear,as a matter of Ohio law.Moreover,the violations are "ongoing"...which can toll any limitations clock.DRENNING V. BLUE RIBBON HOMES,2007 Ohio App.LEXIS 1230,at P.76 (6th.Dist.2007).A "Pleading" is not what the motion for summary judgment is,as Civ.R.7 makes clear.Cf.PRINCIPLE HEALTH CARE OF LOUISIANA V. LEMER AGENCY,INC.,38 F.3d 240, 244 (5th.Cir.1994);YANASZ V. BRUSH WELLMAN,INC.,341 F.3d 559,569 (6th.Cir.2003). Consequently,Defendant's have "waived" the assertions of limitations or res judicata, because it was not mentioned at all in their "Answer",nor have they filed a timely amendment to a "pleading".Obviously summary judgment is not the proper

42

method to assert such affirmative defenses,as it is a"motion",not a "pleading".And the allowable timelines for filing an "amendment" to the Answer under Civ.R.15,has long expired.

LEGAL BASIS FOR CLAIMS FOR RELIEF

The claims brought in the complaint spans several basis' of law and principle.It entails "implied-contract",under O.R.C. §2305.07,it envolves the equity jurisdiction of this court,as well a shared-parenting rights,grandparent rights,a fraudulent alteration of a "will" under statute,the fair distribution of marital property under statute,emotional distress,and an all out attempt at causing Plaintiffs' death...and more.As to the "will" and the "marrital property",which was specifically contested by Defendants in their motion, these particular violations envolve "willful violations of penal statutes",which is cognizable in the common pleas courts as a tort vioaltion.Compare eg.,STATE FARM FIRE & CAS.CO. V. CONDON,163 Ohio App.3d 584 (1st.Dist.2005).The same goes for "Attempted Agravated Murder",as claimed in the complaint.This calls into question "mental states" as well,under O.R.C.§2901.21 & §2901.22...all which are disputed facts,as is evidenced by Defendant's motion.This case also envolves injury's under O.R.C.§2305.10.This also envolves not only emotional distress,but further envolves subsequent personal injury's which occured as a proximate result of Defendant's actions.This also includes injury of a permanent,irreversable nature,for Plaintiff and also his son's and any grandchildren.Whether the intentional infliction of emotional distress elements are met,is a matter for the jury to resolve in the requested jury trial.At any rate,it seems obvious that all elements are met to sustain the intentional infliction of emotional distress...that it does go beyond the bounds of decency,and is outrageous behavior enacted by immediate family of any person.The public (people of the jury) would be shocked in their conscience.This has went on FOR OVER TEN YEARS (and ongoing).Plaintiff can easily establish this fact as the case moves forward with discovery,and further into trial.

When the claims are of such a nature as to span several areas of law,it is clearly most appropriatly filed in the common pleas court,General Division...otherwise we'd have to bifurcate or piecemeal the trial and claims in several different courts.Which would make no feasible sense,and Defendant's assertions that this is the

43.

improper court,or that it must be brought in the Domestic Relations Division or in the Probate Court is baseless.Even if that were true, and it clearly is not,this court would simply transfer it to such division and not merely dismiss it.

WHEREFORE Plaintiff is entitled to judgment in his favor *(1) as a matter of law,and Defendant's motion should be wholly denied. Even if this court were to ignore the clear law regarding the Statutes of Limitations and "Affirmative Defenses",Plaintiff could still easily meet good cause for tolling the limitations.When considering equittable tolling the court must ask two questions:(1)whether plaintiff faced extraordinary circumstances that stood in the way of timely filing,and(2)whether he exercised reasonable diligence.PACE V. DiGUGLIELMO,544 U.S. 408,418 (2005);HOLLAND V. FLORIDA,130 S.Ct. 2549, 2563 (2010).Due to the evidence that is before this court,that Defendant's are STILL TO DATE EVADING AND CONCEALING,it stands to reason that it was their evasive concealments that causes Plaintiff to meet both prongs of the above.Plaintiff was locked down 23/7 from 2004-2011,and is to date still incarcerated.As such,he has had no way, by his reasonable diligence,to discover needed facts or the Defendant's location.At any rate,the issue of statutes of limitations is a question for the jury to determine,(as to "equitable tolling)....if this court were to disregard the law on "Affirmative Defenses".There again, Defendant's motion for summary judgment was premature,improper,and only serves to further delay proceedings or relief.

and being competent to testify to all the herein,I swear under penalty of perjury upon personal knowledge, that all the foregoing is true & correct.

Respectfully Submitted,

April 28, 2014 William H. Evans Jr.

WILLIAM H. EVANS,JR
#A 489-686
Ross Correctional Inst.
P.O.Box 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 774-7050

Plaintiff,Pro Se

* (1): Admissions by a party, whether express or through default, can support a grant of summary judgment. IN RE.CARMEY,258 F.3d 415,420 (5th.Cir.2001).

The foregoing information,as well as the entire contents of the attatched Exhibit-A (6 pages),was sworn to,affirmed,and subscribed in my presence this 28th Day of April ,2014.

Patti Parsons
Notary Public
State of Ohio
My Commission Expires
6-11-2014

Patti Parsons
NOTARY PUBLIC

44.

PROOF OF SERVICE

I certify that on this 28 day of April, 2014, I sent a copy of the foregoing by U.S.Mail, at:

DAVID P. DECK(0068343)
800 Gallia St., Suite 800
Portsmouth, Ohio 45662
(740) 353-3113

Counsel for Defendant's

William H. Ferguson Jr.
Plaintiff, Pro Se

45.

IN THE SUPREME COURT OF OHIO

INRE:DISQUALIFICATION OF HOWARD HARCHA,JUDGE

Scioto Co.Common Pleas Court

Case No. 13 AP 105

AFFIDAVIT OF DISQUALIFICATION

Pursuant to O.R.C.§2701.03,Affiant moves for disqualification of: **Howard Harcha,Judge**

Scioto County Common Pleas Court

602-7th.St.

Portsmouth,Ohio 45662

For disqualification from **Case No. 13-CIH-166** (Common Pleas General Division),being a law suit captioned as **WILLIAM H. EVANS,JR. V. CATHI J. EVANS [and] MARGARET K. EVANS-SANFORD,** at www.sciotocountycp court.org.

At this current date,there are NO hearings scheduled as of yet.The complaint was filed on Sept.13,2013,and an "Answer" was filed on Oct.14,2013...with a motion for default judgment then filed by the Plaintiff/Affiant.

The counsel for the Defendant's in the above common pleas law suit,is: **DAVID B. BECK (0068343)**

---[Harcha,Book,& Beck,LLC]

800 Gallia St.,Suite 800

Portsmouth,Ohio 45662

(740) 353-3113

FILED
OCT 23 2013
CLERK OF COURT
SUPREME COURT OF OHIO

The Plaintiff/Affiant is operating in Pro Se.

The disqualification stems from an apperant relationship between **JUDGE,HOWARD HARCHA III** and one of the partners of the law firm which Mr.Beck is affilliated.To wit:**HOWARD H. HARCHA,JR.** (of Harcha,Book,& Beck,LLC).Plaintiff/Affiant believes them to be related by consanguinity,as counter to **O.R.C.§2701.03(A)**..."allegedly is related to or has bias or prejudice for or against a party ... or a party's counsel...or allegedly otherwise is disqualified".Clearly such a relationship could affect partiallity,and Judge Harcha could reasonably be presumed to have interests in aiding a win for the law-

46

-firm in which his relative is a partner.Futher,Judge Harcha is a personal friend of Margaret K. Evans-Sanford,and of Cathi,by and through Harcha's wife via the Portsmouth City School System, where both Defendant's are employeed.And Judge Harcha presided over a criminal case of Plaintiff/Affiant,in 2003,when he was convicted of protection order violations of Cathi and Margaret.The main issue, however,is the relationship of the judge to a partner in that law firm.In the federal courts,all of the above is held to be adequate grounds for automatic disqualification.See eg.,**ULLMO V. GILMORE ACADEMY**,273 F.3d 671,681 (6th.Cir.2001);**PAULO V. AMERICAN TOBACCO CO.**,535 U.S. 229,233 (2002);**CLEMMONS V. WOLFE**,377 F.3d 322,328 (3rd. Cir.2004);**U.S. V. KELLY**,888 F.2d 732,744-45 (11th.Cir.1989).See also, **Code of Judicial Conduct,Canon 3(E)(1).**

Respectfully Submitted,

Oct. 21, 2013 x William H. Evans, Jr.

William H. Evans,Jr.
#A 489-686
Ross Correctional Inst.
P.O.Box 7010,16149 SR 104
Chillicothe,Ohio 45601
(740) 774-7050
Affiant,Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Affidavit of Disqualification was sent by U.S.Mail,postage prepaid,to:

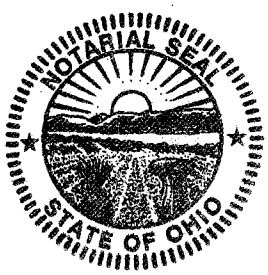
HOWARD H. HARCHA,III---Judge
SCIOTO COUNTY COMMON PLEAS COURT
602-7th.St.
Portsmouth,Ohio 45662
Judge of Disqualification

[and]

DAVID B. BECK,ATTORNEY
---of HARCHA,BOOK,& BECK
800 Gallia St.,Suite 800
Portsmouth,Ohio 45662
Counsel for Defendant's

x William H. Evans, Jr.
Affiant,Pro Se

Sworn to,affirmed,and subscribed in my presence this 21st day of October,2013.



Patti Parsons
Notary Public
State of Ohio
My Commission Expires
6-11-2014

Patti Parsons
NOTARY PUBLIC

47.

IN THE SUPREME COURT OF OHIO

WILLIAM H. EVANS JR.,

Plaintiff,

vs.

CATHI J. EVANS, ET AL.,

Defendants.

Common Pleas Case No. 13-CIH-166

From the Scioto County
Court of Common Pleas

Supreme Court Case No. 13-AP-105

Judgment Entry

Plaintiff William H. Evans Jr. has filed an affidavit with the clerk of this court under R.C. 2701.03 seeking to disqualify Judge Howard H. Harcha III from presiding over any further proceedings in case No. 13-CIH-166 in the Court of Common Pleas of Scioto County.

Judge Harcha has voluntarily recused himself from the underlying case. The affidavit of disqualification is therefore dismissed as moot. The assignment of a visiting judge will be addressed in a separate entry.

Dated this 7th day of November, 2013.

MAUREEN O'CONNOR
Chief Justice

Copies to: Mark Reed, Clerk of the Supreme Court
Hon. Howard J. Harcha III
Scioto County Clerk of Courts
William H. Evans Jr.
David B. Beck, Esq.

48.

The Supreme Court of Ohio

SCIOTO COUNTY
OHIO
2013 DEC 20 PM 12:46
CLERK OF COURTS

CERTIFICATE OF ASSIGNMENT

The Honorable Robert Alan Corbin, a retired judge of the Brown County Court of Common Pleas, General and Domestic Relations Divisions, is assigned effective November 19, 2013, to preside in the Scioto County Court of Common Pleas, General Division, to hear case 13-CIH-166, William H. Evans, Jr. v. Cathi J. Evans, et al. and to conclude any proceedings in which he participated.

Maureen O'Connor
Chief Justice

13JA2814

49.

IN THE COURT OF COMMON PLEAS
SCIOTO COUNTY, OHIO

SCIOTO COUNTY OHIO
2014 AUG -1 PM 1:26
CLERK OF COURTS

William H. Evans, Jr.

Plaintiff

v.

Cathi J. Evans et al

Defendants

Case No. 13 CIH 166

Judgment Entry

* *

This cause came on to be heard upon the various motions pending before the Court. The Court has considered the record and the pleadings, all motions and memoranda therewith, all responses and replies, and the law and rules applicable thereto.

Upon due consideration, the Court does hereby find ad order as follows:

1. As to the Defendants/Counterclaimants' April 21, 2014 Motion For Summary Judgment, the Court finds the same to be well-taken and such Motion For Summary Judgment is hereby granted. The Court has considered the respective Affidavits of Cathi J. Evans and Margaret Evans-Sanford filed with such motion. The Court finds that there are no genuine issues as to any material fact and that the Defendants are entitled to judgment as a matter of law. The Court further finds from the evidence as authorized and permitted under Civil Rule 56 (C) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the Plaintiff and his Complaint filed herein. The court has construed all evidence most strongly in the Plaintiff's favor.

The Defendants, in their Motion For Summary Judgment, identified the basic claims set forth in Plaintiff's Complaint. Item I.A. of the Memorandum summarizes

50

388/139

these claims, and Items I.B. – I.F. inclusive discuss these claims with some particularity. The Court agrees in principle with the statements set forth in the Defendants' Memorandum, and finds that such Complaint alleges no causes of action which are cognizable claims under Ohio law in this action. The issues as to Plaintiff's father's and mother's wills are not properly before this Court, in that they are subject to Probate Court jurisdiction, are not ripe for will contest claims in any event due to inherent statute of limitations provisions having long since expired, and any appellate issues are likewise time prohibited. As to the Plaintiff and Cathi J. Evans' divorce, these claims are time-barred. The Court finds no statement of any claim upon which relief can be granted as to Plaintiff's assertion of Defendants' intentional infliction of emotional distress. The Defendants did have and now have every right to choose to separate themselves and their lives from the Plaintiff. The requisite elements for any such claim, as stated at pages 3 and 4 of Defendants' Memorandum, do not exist. The Plaintiff's claim for Attempted Aggravated Murder is baseless. As to production by the Defendants of personal information, photographs, and other documents as to either themselves and/or the adult children of the Plaintiff and Cathi J. Evans, there is no requirement under Ohio or any other law for such production, and this claim must fail.

As to any claim by the Plaintiff that applicable statutes of limitation have been tolled by reason of the Defendants having resided outside of the State of Ohio, the Court finds that the Affidavits of both Cathi J. Evans and Margaret Evans-Sanford comply with the requirements of Civil Rule 56 (E). To assert that these Defendants do not have personal knowledge of the maters stated in their Affidavits, or that they would not be

51.

competent to testify as to the matters asserted hererin, is totally without any foundation in law or fact.

2. As to Plaintiff's May 12, 2014 Motion For Order to Compel Disclosure of Discovery and To Compel Answers to Interrogatories, and For Order To Deem The Request For Admissions – As Admitted, the court has reviewed all interrogatories and requests for admission as propounded by Plaintiff. The Court finds that neither the answers to such interrogatories nor the requests for admissions, even if admitted, would add anything to Plaintiff's Complaint and his claims and causes of action therewith which would render any of his claims to be such as would entitle him to any relief under Ohio law, having construed the Complaint and all claims thereunder in a light most favorable to the Plaintiff.

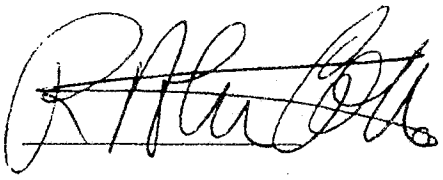
3. Having found in favor of the Defendants upon their Motion For Summary Judgment, all other motions by the Plaintiff which are outstanding and pending before this Court are hereby denied. As to Plaintiff's Motion for Default Judgment, the Court specifically finds the same to be not well taken. The Court likewise finds the Plaintiff's Motion for Preliminary Injunction in Rem and/or Appointment of Receiver not well taken. The Plaintiff's Motion to Strike Affidavits For Improper Form (as to Defendants' Summary Judgment Affidavits) to be without merit. The Plaintiff's Request For Findings of Fact and Conclusions of Law is hereby found to be without merit and denied, in view of Civil Rule 52 in its third paragraph providing that such Findings and Conclusions are unnecessary upon a Civil Rule 56 Summary Judgment Motion.

4. Insofar as necessary, the Court grants leave for the Plaintiff to be relieved of electronic filing requirements.

5. The Court accordingly orders the Plaintiff's September 13, 2013 Complaint for Damages and for Specific Performance dismissed with prejudice. Costs are waived in accordance with Plaintiff's Affidavit of Indigency.

6. The Defendants' October 15, 2013 Counterclaim, to which the Plaintiff filed his Answer, remains pending before the Court. The Defendants shall indicate in a writing filed with the Court their intention as to pursuing such Counterclaim, such writing to be filed within fourteen (14) days of the filing of this Judgment Entry. In the event the Defendants file a Civil Rule 41 Notice of Dismissal as to their Counterclaim, the same shall be served upon the Plaintiff.

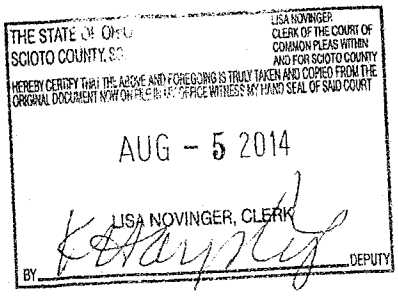
7. It is all so ordered. There is no just reason for delay.



Judge R. Alan Corbin

To the Clerk:

Please issue and forward a certified copy of the within Judgment Entry to the Plaintiff William H. Evans, Jr. #A 489 – 686, Ross Correctional Institution, P.O. Box 7010, 16149 S.R. 104, Chillicothe, OH 45601 and to Defendants' counsel David B Beck, and note the same upon the docket pursuant to Civ. R. 58 (B).



52