[Cite as *Grenga v. Vantell*, 2016-Ohio-4804.]

STATE OF OHIO, MAHONING COUNTY

IN THE COURT OF APPEALS

SEVENTH DISTRICT

JOSEPH ROBERT GRENGA	)	CASE NO. 14 MA 0011
	)	
PLAINTIFF-APPELLANT	)	
	)	
VS.	)	OPINION
	)	
JASON A. VANTELL, et al.	)	
	)	
DEFENDANTS-APPELLEES	)	

CHARACTER OF PROCEEDINGS:	Civil Appeal from the Court of Common Pleas of Mahoning County, Ohio Case No. 12 CV 1153
JUDGMENT:	Affirmed.
APPEARANCES:	
For Plaintiff-Appellee:	Joseph Robert Grenga, Pro se 5498 Glenwood Avenue Boardman, Ohio 44512
For Defendant-Appellant:	Atty. Mark A. DeVicchio Betras, Kopp & Harshman, LLC 6630 Seville Dr. Canfield, Ohio 44406

JUDGES:

Hon. Cheryl L. Waite
Hon. Carol Ann Robb
Hon. Stephen A. Yarbrough of the Sixth District Court of Appeals, sitting by assignment.

Dated: June 29, 2016

[Cite as *Grenga v. Vantell*, 2016-Ohio-4804.]
WAITE, J.

{¶1} Appellant, Joseph Robert Grenga, (hereinafter "Grenga"), appeals a trial court decision of January 10, 2014, granting summary judgment in favor of Appellees, Jason A. Vantell, individually, and as dba Vantell Associates, Inc., (hereinafter "Vantell") on Vantell's claims of intentional and/or negligent infliction of emotional distress, defamation, and frivolous conduct. Grenga was the plaintiff in this matter. In Grenga's complaint he sought to recover against Vantell and various John Doe defendants for trespass, invasion of privacy, illegal search of his lands, and conspiracy to commit aggravated trespass. Summary judgment was granted based on Vantell's counterclaims. Grenga filed the instant appeal.

{¶2} At the outset, we note that the instant matter stems from an extensive case history involving Grenga and a number of people and entities he has unsuccessfully sued regarding the parcel at issue, 128 West Rayen Avenue in Youngstown (hereinafter "the property").

{¶3} In the instant case, Grenga brought suit against Vantell based on his belief that Vantell was employed by Youngstown State University ("YSU") to inspect the property. For reasons unknown, he did not include Vantell as a named defendant in a previous action he filed in the Court of Claims against YSU. Since the filing of this appeal, the Court of Claims has ruled in favor of YSU, which has been affirmed by the Tenth District on appeal. Neither have found merit in Grenga's claims for trespass and invasion of privacy. *Grenga v. Youngstown State University*, 10th Dist. No. 11AP-165, 2011-Ohio-5692.

{¶4} Grenga has filed a *pro se* brief which is extremely convoluted, difficult to follow and rarely, if ever, cites to the court record. The brief is nearly impossible to read and clearly does not comply with the Ohio Rules of Appellate Procedure. For these reasons alone we could easily dismiss this appeal. App.R. 12(A)(2) and 16(A)(7); *Carpino v. Wheeling Volkswagen-Subaru*, 7th Dist. No. 00 JE 45, 2001-Ohio-3357. A party choosing to proceed through litigation *pro se* is held to the same standard as those who have retained legal counsel. *State ex rel. Fuller v. Mengel,* 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶ 10. Dismissal of this case for the multiple deficiencies in Grenga's brief is clearly warranted, as courts may grant *pro se* litigants reasonable latitude but cannot completely disregard the appellate rules to accommodate a litigant who fails to obtain legal counsel. *Robb v. Smallwood,* 165 Ohio App.3d 385, 2005-Ohio-5863, 846 N.E.2d 878, ¶ 5. However, in the interest of justice and thoroughness, we will address those issues raised that are both decipherable and cogent.

{¶5} Grenga attempts to assert fourteen assignments of error, many of which are redundant, misstate the record, or contain merely unproven factual assertions and speculation. The doctrines of *res judicata* and issue preclusion play a prominent role here, as well as the fact that Grenga earlier entered into a legally binding settlement agreement which included a release of all pertinent claims. For example, Grenga believes, whether accurately or not, that Vantell illegally performed the appraisal as an agent for YSU. However, that very issue has already been heard and determined by the Court of Claims and the Tenth Appellate District.

Alternatively, Grenga also claims that Vantell was working for the Mahoning County auditor when allegedly illegally conducting the appraisal. These claims are precluded by operation of a release clause found in a 2009 settlement agreement. A review of this record reveals that the trial court did not err in granting summary judgment to Vantell and in sustaining Vantell's motion for sanctions pursuant to Civ.R. 11 and R.C. 2323.51(A). Grenga's assignments of error are without merit and the judgment of the trial court is affirmed.

Factual History

{¶6} Grenga obtained the property at issue by way of a sheriff's sale in October 2001, for $95,800, an event that itself became the subject of litigation in this Court. In March of 2007, representatives from Youngstown State University (hereinafter "YSU"), and the City of Youngstown (hereinafter "City"), obtained permission from one of Grenga's employees to enter the property for an inspection, as discussions had begun regarding revitalization of the area by YSU and the City. In January of 2008, the City filed a petition to appropriate the property through eminent domain. As part of that proceeding, the City filed a motion asking the court to order the property's appraisal. Grenga then transferred title to the property into the names of both himself and his wife, Paula Jean Grenga, jointly. The magistrate sustained the City's motion and ordered the appraisal. Grenga filed objections to the magistrate's decision and the matter was heard by the trial court. The court overruled Grenga's objections and ordered an appraisal be conducted on February 13, 2009. In its judgment entry, the trial court stated, "Plaintiff may schedule with the

County Auditor's Office a time to appraise the property. Plaintiff is entitled to use whatever means are necessary to gain entry into the Defendant Grenga's property for the purpose of such inspection. Plaintiff shall notify Defendant Grenga by regular U.S. Mail of its intention to enter his property."

{¶7} As mentioned, there has been a long history of litigation involving this property which includes similar claims against any number of defendants. This appears to have commenced when Grenga and his wife initiated litigation over the sheriff's sale in which they acquired the property. *Grenga v. Bank One, N.A.*, 7th Dist. No. 04 MA 94, 2005-Ohio-4474. Grenga and his wife later filed a complaint against YSU, the City, and the Attorney General of Ohio, contending they were entitled to additional monetary relief as a result of the government's acquisition of the property in an eminent domain action. *Grenga v. City of Youngstown,* Mahoning County Common Pleas Case No. 2008 CV 4173. The trial court in the eminent domain action held that YSU, as an "instrumentality of the state," can only be sued in the Court of Claims. (1/14/09 J.E.) The Grengas dismissed their Mahoning County case on June 19, 2009 and filed an action with the Court of Claims alleging the same claims on August 18, 2012. The named defendants before the Court of Claims were YSU; Gregory G. Morgione, individually and in his capacity as YSU's General Counsel; James Mineo, individually and in his capacity as a YSU employee; the Attorney General of Ohio; and various John Does. Grenga alleged that the defendants entered his property without privilege or authority, and raised additional claims for criminal and civil trespass, invasion of privacy, illegal search, conspiracy to

commit aggravated trespass, due process and equal protection violations. The Court of Claims ruled against Grenga on all counts and this decision was subsequently affirmed by the Tenth Appellate District on appeal.

{¶8} The eminent domain action filed by the City resulted in settlement, journalized by the court in an entry dated August 27, 2009. The settlement amount stated that Grenga was to receive $235,000.00 for appropriation of the property and contained a release clause in which Grenga agreed, among other things, to release all claims for further compensation regarding the property.

{¶9} However, on October 14, 2010, Grenga filed another action regarding the property naming the following defendants: Mineo, individually and in his capacity as an employee of YSU; Jeffrey L. Chagnot; Phil Koch; Gary L. Tharp; Gregory G. Morgione, individually and in his capacity as YSU's General Counsel; John Pierko; William D'Avignon; Sharon Woodberry; and a number of John Doe defendants. *Grenga v. Mineo, et al.,* Mahoning County Common Pleas Case No. 2010 CV 3920. In this action Grenga again alleged various trespass and invasion of privacy claims. Vantell was not named as a defendant. However, Vantell was subpoenaed by Grenga. The subpoena included a request that he provide all documents relative to the appraisal he had conducted on the property. (Tr. Exh. 2A.) That case was ultimately dismissed by the trial court in a judgment entry dated May 22, 2012 for failure to appear for the final pretrial or trial. Grenga filed an appeal with this Court. We dismissed the appeal *sua sponte* as untimely. *Grenga v. Mineo, et al.*, 7th Dist. No. 12 MA 0130.

{¶10} On April 18, 2012, Grenga filed the instant matter. He asserts the identical claims as in his previous litigation. Vantell filed an answer and counterclaimed for intentional and/or negligent infliction of emotional distress, defamation and frivolous conduct.

{¶11} Grenga filed a motion for default judgment in the case on July 10, 2012. However, the trial court granted Vantell's motion for leave to plead. Vantell then filed a motion to dismiss pursuant to Civ.R. 12(B)(1), (6) and (7). Grenga responded by filing his own motion to dismiss pursuant to Civ.R. 12(B)(6) to which he inexplicably attached copies of court records of Vantell's two previous traffic violations, stating at page seven in his memorandum in support that Vantell was, "no stranger to the judicial system." On December 4, 2012, the magistrate sustained Vantell's motion to dismiss, finding that Grenga's allegations had been previously asserted in both an earlier Mahoning County case and before the Court of Claims. Grenga's motion for default judgment was denied and Grenga's motion for summary judgment was deemed moot. Grenga filed a motion seeking findings of fact and filed objections to the magistrate's decision. Both parties submitted proposed findings of fact and conclusions of law. The trial court ultimately sustained Grenga's objections to the motion to dismiss. The court held that because the magistrate considered the brief filed in support of the motion to dismiss and the parties were entitled to notice if the court intended to convert a motion to dismiss on the pleadings into a motion for summary judgment, the judge held that the magistrate improperly based his decision

on matters outside of the complaint. The court converted the matter to summary judgment and set the case for a non-oral hearing.

{¶12} On February 15, 2013, yet another complaint was filed, this time by Grenga's wife, Paula Jean Grenga, against Vantell. This filing raised the same allegations as Grenga's action of the previous year. Mahoning County Common Pleas Case No. 2013 CV 426. Vantell filed a motion to consolidate both cases, which was sustained by the trial court. Vantell filed an answer to Paula Grenga's complaint containing the same counterclaims he filed in her husband's case. Paula Grenga's deposition was taken on April 29, 2013. At deposition, she stated under oath that she had never seen Vantell prior to filing the action, nor had she seen a copy of the appraisal at issue. She testified that she had only been informed of the allegations raised in her complaint by her husband, and that she had no independent knowledge of the allegations set forth in her complaint. She also stated that she did not understand some of these allegations and that her husband helped her draft the complaint. Vantell filed a motion to dismiss/motion to strike Paula Grenga's complaint on April 30, 2013. Eventually, after obtaining independent counsel, Paula Grenga dismissed her complaint.

{¶13} Grenga filed a motion for sanctions pursuant to Civ.R. 11 on March 15, 2013, citing no caselaw or other authority in support of his motion. It was overruled. On June 25, 2013, Vantell amended his counterclaim to include claims for defamation *per se*, slander and/or slander *per se*, libel and/or libel *per se*, and unauthorized practice of law. On October 3, 2013, Vantell filed a motion to compel

deposition or, in the alternative, a motion to dismiss, as Grenga refused to participate in deposition or provide any testimony in the case. Grenga filed a motion seeking a protective order to shield him from deposition. On October 9, 2013 the trial court denied Grenga's motion and ordered his deposition to proceed.

{¶14} On June 6, 2013, while the instant case was pending in the trial court and four years after Vantell's appraisal, Grenga filed a complaint against Vantell with the Department of Commerce alleging criminal conduct, including trespass and fraud. In this complaint he alleged that he told Vantell if he got caught inside the property "he would surely have been arrested." However, at deposition Grenga admitted that he never actually spoke to Vantell or communicated any verbal warning. The Department opened an investigation, however, which Vantell was compelled to defend. After initial investigation, the Department issued an administrative decision concluding that no further inquiry was warranted. Grenga was offered an opportunity for reconsideration of that decision which he opted to take, requiring Vantell to travel to Columbus. Ultimately, no further action was taken on the part of the Department of Commerce in the matter.

{¶15} On October 31, 2013, Vantell filed a motion for summary judgment on Grenga's allegations and also sought summary judgment as to his own counterclaims. On January 10, 2014, the trial court issued a judgment entry granting summary judgment to Vantell on Grenga's claims and also granting summary judgment to Vantell with respect to his claim of defamation *per se* against Grenga.

Additionally, the trial court sustained Vantell's motion against Grenga for sanctions for engaging in frivolous conduct.

{¶16} Grenga filed a notice of appeal with this Court on February 5, 2014. By judgment entry dated February 21, 2014, we held the appeal in abeyance and issued a limited remand for sixty days to allow the trial court to rule on damages and attorney fees.

{¶17} A hearing on these issues was held March 27, 2014. Grenga did not provide any testimony or contest the issue of attorney fees other than to assert that he should only be responsible for one-half of Vantell's attorney fees because his wife had also been a named plaintiff. Vantell presented expert testimony on the issue of attorney fees, including the reasonable and customary nature of the attorney fees requested.

{¶18} Vantell testified that Grenga damaged his reputation with his allegations of criminal wrongdoing to the Department of Commerce. He also testified as to the expenses he incurred, beyond attorney fees, as a result of being forced to defend the claim.

{¶19} In an attempt to rebut this testimony, Grenga's counsel tried to introduce traffic citations Vantell received approximately eighteen years earlier as evidence of alleged criminal behavior. However, the magistrate noted, "Plaintiff's attempt to introduce evidence of an 18 year old traffic stop had no credible connection to establishing any defense of truth as to Grenga's allegations regarding

Vantell's trespassing or other alleged criminal behavior as alleged by Grenga." (5/7/14 Mag. Dec., p. 3.)

{¶20} On May 7, 2014, the magistrate issued a decision concluding that Grenga and his wife's claims were "indistinguishable from one another." Hence, Grenga was ordered to pay all of Vantell's attorney fees in the amount of $15,768.75. (5/7/14 Mag. Dec., p. 7.) Grenga was also ordered to pay Vantell $1,227.60 for out-of-pocket expenses and $6,000 in lost wages. No punitive damages were awarded. We subsequently issued another sixty-day remand on May 9, 2014, due to Grenga's filing of an affidavit of disqualification against the trial court.

{¶21} Grenga filed a motion for leave to file an amended notice of appeal on July 25, 2014 but failed to identify any order sought to be included on appeal. On August 5, 2014, we returned the appeal to the active docket and granted Grenga thirty days to file a transcript. We subsequently also denied Grenga's motion to amend for his failure to identify any specific order and denied Grenga's motion to extend time. While we also provided notice that Grenga could move to amend the notice of appeal as long as a motion was filed within thirty days of a specific new order or that he could file a new appeal and move to consolidate, Grenga failed to exercise either option. As such, this appeal involves only the January 10, 2014 trial court judgment entry.

{¶22} As earlier discussed, fourteen assignments of error are presented. These will, of necessity, be rearranged and addressed in a cogent and consolidated fashion.

Assignment of Error Number Ten

The Trial Court abused their [sic] discretion by finding res judicarta [sic], estoppel by judgment, and issue preclusion bars Appellant's complaint.

{¶23} The standard of review for a trial court's decision to dismiss on *res judicata* grounds is *de novo. Ohio Bell Tel. Co., v. Pub. Util. Comm.,* 64 Ohio St.3d 145, 147 (1992). The doctrine of *res judicata* encompasses both claim preclusion and issue preclusion. *Grava v. Parkman Twp.,* 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995). "A valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action." *Id.* at syllabus.

{¶24} Claim preclusion operates to bar subsequent actions by the same parties based on any claim arising (1) out of the same transaction, and (2) that was the subject matter of the previous action. *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 692 N.E.2d 140 (1998). Thus, "the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." *Grava* at 382. A transaction is defined as a "common nucleus of operative facts." *Id.* Moreover, pursuant to Section 25 of the Restatement of Judgments, claim preclusion operates to "extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action (1) To present evidence or grounds or theories of the case not presented in the first action, or (2) To seek remedies or forms of relief not demanded in the first

action." (Emphasis deleted.) *Id*. at 383. Thus, an attempt to approach the same claim using a new theory, grounds, evidence or form of relief will not circumvent claim preclusion.

{¶25} Hence, we must determine if another case or another court has already litigated the factual dispute regarding whether Vantell, as an appraiser, had the right to enter Grenga's property. It is clear that the current complaint is based on a claim arising from an identical nucleus of facts that was the subject matter of both the action in the Court of Claims against Youngstown State University, and in the common pleas appropriation case against the City of Youngstown which resulted in Grenga entering into a voluntary settlement and release. Grenga is making the same assertions he made in both of the other matters regarding trespass, illegal search and invasion of privacy. These claims result from the same entry, property, and building and they rely on the same set of facts as in the previous actions. Grenga's claims in this case are barred by claim preclusion under the doctrine of *res judicata*. Grenga has had a full and fair opportunity to assert these claims at least twice previously.

{¶26} The second subpart of *res judicata,* issue preclusion, prevents a party from relitigating in a second action a fact or issue that was fully litigated in a previous suit. *Thompson v. Wing*, 70 Ohio St.3d 176, 183, 637 N.E.2d 917 (1994). Issue preclusion applies when, "the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom [issue preclusion] is asserted was a

party in privity with a party to the prior action." *Id.* In both the appropriation action involving the City of Youngstown and in his action in the Court of Claims against YSU, the issue of trespass, invasion of privacy and illegal search were actually and directly litigated by courts of competent jurisdiction.

{¶27} Privity occurs when "the relationship between the one who is a party on the record and another is close enough to include that other within the res judicata." *Thompson*, at 184. The question here is whether Vantell was in privity with a party in a previous action. Vantell testified that he was retained by the Mahoning County prosecutor to aid the auditor in appraising Grenga's property for appropriation pursuant to R.C. 163. The record also contains an affidavit from the Mahoning County prosecutor who represented the auditor during the pendency of the appropriation action. This affidavit corroborates Vantell's testimony that he was acting as an authorized agent of Mahoning County when he performed the appraisal.

{¶28} Grenga testified at deposition that he believed Vantell was working as an appraiser for YSU and not Mahoning County. However, while this action was pending before the trial court, Grenga filed a claim against YSU in the Court of Claims. In it, he failed to name Vantell, despite his stated belief that Vantell was working on behalf of YSU. Had he actually been working for YSU, he would have been in privity with a party to the Court of Claims case. Inasmuch as the facts reveal that Vantell was in privity with the governmental agents in the common pleas appropriation case, the settlement agreement entered in that case equally applies to Vantell. That voluntary settlement included a release by Grenga of all claims arising

from the appropriation of the property. Because Vantell is in privity with the parties in the previous action, Grenga is collaterally estopped here from relitigating any issues against Vantell that were ultimately settled in the previous action.

{¶29} Although Grenga's attempts to relitigate the same claims and issues addressed in previous actions may be attributed to his ignorance of the law as a *pro se* litigant, "[*pro se* litigants] are ultimately held to the same standards of conduct and are presumed to have the same knowledge of the law as litigants who are represented by counsel." *Sky Bank v. Hill*, 7th Dist. No. 03 MA 114, 2004-Ohio-3046, ¶ 9. As such, Grenga's tenth assignment of error is without merit and is overruled.

Assignment of Error Number One

> The Trial Court abused their [sic] discretion by not granting Appellant Summary Judgment when all provisions of Civ. R. 56 were met.

{¶30} Because Grenga's claims are barred under the doctrine of *res judicata*, the assignment of error dealing with his claims in summary judgment is meritless. Grenga argued all the same claims in his previous actions. He is not permitted to relitigate the same issues. Summary judgment against him was entirely appropriate. Grenga's first assignment of error is also without merit and is overruled.

Assignment of Error Number Four

> The Trial Court abused their [sic] discretion by finding merit in Appellee's Count III.) Defamation Per Se.

{¶31} Grenga contends the trial court erred in "finding merit" in Vantell's claim of defamation *per se*. The trial court granted summary judgment to Vantell on this

claim. In reviewing an award of summary judgment, appellate courts apply a *de novo* standard of review. *Cole v. Am. Industries & Resources Corp.,* 128 Ohio App.3d 546, 552, 715 N.E.2d 1179 (1998). Civ.R. 56(C) provides that the trial court is to grant summary judgment if there is no genuine issue of material fact and, when construing the evidence most strongly in favor of the nonmoving party, reasonable minds can only conclude that the movant is entitled to judgment as a matter of law. *State ex rel. Parsons v. Fleming,* 68 Ohio St.3d 509, 511, 628 N.E.2d 1377 (1994). In order to determine whether a fact is material, we look to the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995), citing *Anderson v. Liberty Lobby, Inc.,* 106 S.Ct. 2505, 477 U.S. 242 (1986).

{¶32} "[T]he essential elements of a defamation action, whether slander or libel, are that 'the defendant made a false statement, that the false statement was defamatory, that the false statement was published, that the plaintiff was injured and that the defendant acted with the required degree of fault.' " *Heidel v. Amburgy*, 12th Dist. No. CA2002-09-092, 2003-Ohio-3073, ¶ 14 citing *Celebrezze v. Dayton Newspapers, Inc.*, 41 Ohio App.3d 343, 346-347, 535 N.E.2d 755 (8th Dist.1988). A *prima facie* case for defamation is made when the party asserting the claim has established publication to a third person for which the other party is responsible, and that the party receiving the information understands the actionable character and defamatory meaning of the statement. *Hahn v. Kotten*, 43 Ohio St.2d 237, 243, 331 N.E.2d 713 (1975). A statement is defamatory when it causes injury to one's

reputation, or exposes one to public hatred, contempt, ridicule, shame or disgrace, or has an adverse effect on one's trade or business. *Matalka v. Lagemann,* 21 Ohio App.3d 134, 136, 486 N.E.2d 1220 (8th Dist.1985).

{¶33} Defamation is further categorized as defamation *per se* and defamation *per quod*. Defamation *per se* occurs when material is defamatory on its face, *i.e.*, by the direct meaning of the words used. *Moore v. P.W. Pub. Co.*, 3 Ohio St.2d 183, 188, 209 N.E.2d 412 (1965). Defamation *per quod* occurs when material is defamatory through interpretation or innuendo. *Id.* If a statement is found to be defamation *per se*, both damages and actual malice are presumed. *Westropp v. E.W. Scripps Co.*, 148 Ohio St. 365, 74 N.E.2d 340, (1947), paragraph four of the syllabus.

{¶34} In the instant matter, the trial court concluded that, as Vantell was acting in his official capacity as an appraiser for the Mahoning County auditor, he was legally permitted to enter the property to conduct an appraisal. The record clearly supports this conclusion, as evidenced by both the Mahoning County prosecutor's affidavit and Vantell's testimony. Further, in his "Description of Complaint" filed with the Ohio Department Real Estate and Professional Licensing and admitted into the record, it is apparent Grenga makes several assertions of a defamatory nature regarding Vantell:

> Jason A. Vantell entered my building without my consent. * * * Jason A. Vantell, and his employeer [sic] were warned, both orally and by written notices that if they enter, or attempt to enter my building, they would be

> subjected to criminal trespass. * * * If Jason A. Vantell was caught inside the building, he would surely have been arested [sic]. * * * There was no court order signed by a judge, or magistrate, or any other document that would permit Jason A. Vantell to enter my building.

(Ohio Division of Real Estate & Professional Licensing Complaint Form, p. 4).

{¶35} This complaint, filed with the state agency responsible for Vantell's professional licensing, not only constitutes an attempt to damage Vantell's reputation in his occupation and trade but also alleges criminal activity, both of which constitute defamation *per se*. Moreover, the statements are defamatory on their face, without need for interpretation or innuendo. *Moore,* at 188. Grenga asserted that Vantell entered the property without permission, illegally searched the property, criminally trespassed on the property without court order and that he ignored a verbal warning to stay off the property. As evidence of his knowledge of the falsity of these assertions, in Grenga's deposition testimony he acknowledged that he knew these statements were false. He stated that there was, in fact, a court order allowing Vantell on his property and he had never actually spoken to Vantell to communicate any sort of warning.

{¶36} In response to Grenga's license complaint, the Ohio Department of Commerce began an investigation of Vantell (ODC Case No. 2013-394) which necessitated that Vantell hire legal counsel. The trial court correctly concluded that Grenga's statements to the Ohio Department of Commerce were knowingly false when made and were made in order to injure Vantell with respect to his occupation

as an appraiser. Asserting that Vantell engaged in criminal activity while acting in his capacity as an appraiser requires no further reliance on interpretation or innuendo. As such, these statements constitute defamation *per se*, and actual damages are presumed. The trial court did not err in granting summary judgment in favor of Vantell on his claim of defamation *per se*. Grenga's fourth assignment of error is without merit and is overruled.

Assignments of Error Two, Three, Five, Six and Seven

> The Trial Court abused their [sic] discretion by finding merit in Appellee's Count I.) Intentional and/or Negligent Infliction of Emotional Distress.
>
> The Trial Court abused their [sic] discretion by finding merit in Appellee's Count II.) Defamation.
>
> The Trial Court abused their [sic] discretion by finding merit in Appellee's Claim IV.) Libel and/or Libel Per se.
>
> The Trial Court abused their [sic] discretion by finding merit in Appellee's Count V.) Slander and/or Slander Per Se.
>
> The Trial Court abused their [sic] discretion by finding merit in Appellee's Count VI.) Unauthorized Practice of Law.

{¶37} We note at the outset that, in raising these assignments, Grenga does not present his arguments in conformity with the appellate rules. Pursuant to App.R. 16(A)(7), an appellant is required to set forth an argument with respect to "each

assignment of error presented for review and the reasons in support of the contentions, with citations to the authorities, statutes, and parts of the record on which appellant relies." In his various assignments, Grenga instead engages in conjecture and opinion based on his disagreement with the facts as "found" by the trial court. "The court may disregard an assignment of error presented for review if the party raising it fails to identify in the record the error on which the assignment of error is based or fails to argue the assignment separately in the brief, as required under App. R. 16(A)." App.R. 12(A)(2). Based on the above, we may entirely disregard these assignments of error pursuant to App.R. 16(A)(7) and App.R. 12(A)(2). *Allied Erecting & Dismantling Co., Inc. v. Ohio Edison Co.,* 7th Dist. No. 10 MA 25, 2011-Ohio-2627, ¶ 62.

{¶38} Notwithstanding his nonconformity with the rules, in these assignments, Grenga misconstrues the trial court's ruling. In its judgment entry, the court granted summary judgment in favor of Vantell on Grenga's claims as well on Vantell's own claim of defamation *per se*. In so doing, the trial court did not engage in factfinding. Instead, the court held the record contained ample evidence, that there were no material facts in dispute, and that Vantell was entitled to judgment as a matter of law. Therefore, Grenga's second, third, fifth, sixth and seventh assignments of error are without merit and are overruled.

Assignments of Error Number Eight and Nine

> The Trial Court abused their [sic] discretion in finding merit in Appellee's Count VII.) Frivolous Conduct.

> The Trial Court abused their [sic] discretion by sanctioning Appellant for events that never occurred.

{¶39} Grenga contends the trial court erred in "finding merit" in Vantell's claim for frivolous conduct and for the award of monetary sanctions against him. In its judgment entry, the trial court granted Vantell's motion for sanctions on the basis that Grenga engaged in frivolous conduct.

{¶40} A trial court has discretion in determining whether to award sanctions under R.C. 2323.51 and its decision will not be reversed absent an abuse of discretion. *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, 957 N.E.2d 19, ¶ 10-11. To prove abuse of discretion, Grenga must establish the decision was unreasonable, arbitrary or unconscionable. *Id.* at ¶ 11.

{¶41} R.C. 2323.51(A)(1)(a) reads:

> (A) As used in this section:
>
> (1) "Conduct" means any of the following:
>
> (a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

{¶42} Furthermore, R.C. 2323.51(A)(2)(a), provides:

> (2) "Frivolous conduct" means either of the following:

> (a) Conduct of an inmate or other party to a civil action, * * * that satisfies any of the following:
>
> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

{¶43} Again, as throughout his appellate brief, Grenga cites to no authority or specific portion of the record in support of his assignments of error, in violation of App.R. 12(A). This record, however, is replete with evidence supporting the trial court's conclusion. It is clear from our analysis of defamation *per se* above that

Grenga was fully aware of a court order which permitted Vantell into the property for purposes of doing an appraisal and yet continued to file and pursue claims of criminal trespass both in the court of common pleas and court of claims, and in a separate administrative action before the Department of Commerce. He continued this litigation despite his own contemporaneous deposition testimony both acknowledging the existence of the court order and admitting that he had never even spoken to Vantell, making his assertions about verbal warnings to Vantell impossible. Grenga also claims that he was unaware that Vantell was in privity with another party to the 2009 common pleas court settlement (by virtue of his capacity as an appraiser for the Mahoning County auditor), instead claiming that he thought Vantell was an employee of YSU. However, Grenga did not name Vantell in his lawsuit against YSU in the Court of Claims, either, instead filing the instant, duplicative action. If he truly believed Vantell was a YSU employee, this decision to file the instant suit against Vantell is doubly perplexing particularly in light of his lack of success in the Court of Claims and on the appeal of the Court of Claims' decision. It is apparent from the record, here, that Grenga's conduct has served to "maliciously harass" Vantell and is not based on any evidence. Therefore, the trial court did not abuse its discretion in granting Vantell's motion for sanctions.

{¶44} Based upon the foregoing, Grenga's eighth and ninth assignments of error are without merit and are overruled.

Assignments of Error Eleven, Twelve, Thirteen, Fourteen

The Trial Court abused their [sic] discretion by not granting Appellant's Motion to Reset Trial Date.

The Trial Court abused their [sic] discretion in considering Ms. Phillips defective affidavit as it did not conform to Civil Rule 56(E).

The Trial Court abused their [sic] discretion in relying on deposition of Appellant in their [sic] Judgment Entry.

The Trial Court Abused their [sic] discretion by failing to recognize that Appellee's admissions were already deemed admitted.

{¶45} In assignments of error eleven, twelve, thirteen and fourteen, Grenga claims the trial court abused its discretion in a number of procedural matters. These will be addressed together for the sake of clarity. The trial court's determination on each of these matters will not be disturbed absent an abuse of discretion. An abuse of discretion reflects more than an error of judgment, but that the trial court acted unreasonably, arbitrarily or unconscionably in making its determination. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219, 450 N.E.2d 1140 (1983). When applying the abuse of discretion standard, an appellate court may not substitute its judgment for that of the trial court. *Pons v. Ohio State Med. Bd.,* 66 Ohio St.3d 619, 621, 614 N.E.2d 748 (1993).

{¶46} A jury trial was scheduled in the instant case for December 17, 2013. Vantell was present with his counsel and witnesses. Grenga failed to appear or otherwise notify the court regarding his absence. Instead, on December 30, 2013

Grenga filed a motion to reset that trial date. The trial court denied the motion and subsequently ruled on the parties' opposing motions for summary judgment and Vantell's motion for sanctions for frivolous conduct.

{¶47} A trial judge is afforded considerable discretion in managing its docket. *In re Disqualification of Sutula,* 105 Ohio St.3d 1237, 2004-Ohio-7351, 826 N.E.2d 297, ¶ 4. Grenga did not provide the court with adequate notice or excuse for his absence at trial nor does he provide it on appeal. Rather, Grenga posits, "Appellee would not be prejudiced by the Court resetting the trial date, as they claimed a meritorious defense." (Appellant's Brf., p. 34.) If such reasoning were an excuse for failure to appear, it would render a court's ability to manage its docket to ensure timely and efficient justice impossible. The record also reflects that the trial court fully addressed each of the matters before it, including the opposing motions for summary judgment. Inasmuch as Grenga had filed a motion for summary judgment, in which he averred to the court that the matter involved no determination of material fact and instead should be resolved purely on the law, it was impossible for the court to abuse its discretion in failing to reschedule the trial date. Grenga, himself, had already informed the court that there was nothing to try. Grenga's eleventh assignment of error is without merit and is overruled.

{¶48} Grenga next contends the trial court erred in admitting the Mahoning County prosecutor's affidavit into evidence as he claims it is defective because the affidavit refers to a document that is not attached.

{¶49} The affidavit at issue, submitted by Elizabeth M. Phillips, assistant prosecuting attorney for the Mahoning County prosecutor's office, includes twenty separate items which detail her experience as an assistant prosecutor as well as her personal knowledge of the procedural history in the eminent domain action filed by the City of Youngstown. The only documents referred to in the affidavit are matters of public record, including the complaint, a March 24, 2008 judgment entry ordering the Mahoning County auditor to name the specific appraiser in the matter and a subsequent judgment entry specifying Vantell. The last document to which the affidavit referred was a letter sent directly to Grenga informing him of the date and time of the scheduled appraisal. The prosecutor clearly based all of her averments on personal knowledge. Therefore, Grenga's assertion that the affidavit is defective is without merit and his twelfth assignment of error is overruled.

{¶50} In Grenga's next assignment he contends that the trial court erred in considering his deposition testimony, as it was not certified as required by Civ.R. 30. A review of the record reveals no defects with Grenga's deposition in form or substance. "[A]bsent an abuse of discretion, an appellate court must affirm a trial court's disposition of discovery issues." *State ex rel. The V Cos. v. Marshall*, 81 Ohio St.3d 467, 469, 692 N.E.2d 198 (1998).

{¶51} A notice of examination was filed in accordance with Civ.R. 30. Grenga refused to be deposed. This refusal necessitated that Vantell file a motion to compel, which resulted in a court order requiring Grenga to testify in the matter. The subsequent deposition transcript was certified by the reporter, also in

accordance with the rules. As he cites to no portion of the record in support of his claim, it appears Grenga is simply attempting to avoid review of the testimony contained within the deposition, testimony which directly contradicts the allegations in his complaint. There was no abuse of discretion by the trial court in considering Grenga's deposition testimony when making its determination. Grenga's thirteenth assignment of error is without merit and is overruled.

{¶52} Grenga next asserts the trial court erred in "failing to recognize that Appellee's admissions were already deemed admitted." (Appellant's Brf., p. 36.) Although Grenga again violates the appellate rules in failing to direct this argument to the record, it appears that he takes issue with Vantell's motion to strike his second request for production of documents. Vantell filed an answer to the second request on May 8, 2013. Vantell objected to all four of Grenga's requests for documents on the basis that they were vague, ambiguous, or sought material already in Grenga's possession or available in the public domain. They included a request that appears to ask Vantell for any documents he does not have, and seeks for Vantell to reveal the whereabouts of these unknown documents. Grenga also asked Vantell to produce all court orders and exhibits in the eminent domain case.

{¶53} Vantell subsequently filed a motion to strike Grenga's requests as vague, frivolous and/or already in Grenga's possession. It is this filing that Grenga apparently attacks on appeal. There is no evidence of record that the trial court expressly ruled on Vantell's motion to strike. Nevertheless, when the trial court ruled in Vantell's favor, we may glean that the trial court dismissed Grenga's requests.

Based on this record, we cannot find the trial court's decision rises to an abuse of discretion. As such, Grenga's fourteenth assignment of error is overruled.

Conclusion

{¶54} Grenga contends the trial court erred in concluding his claims were barred under the doctrine of *res judicata*. The record reveals that Grenga's claims are barred by both prongs of the *res judicata* doctrine, issue preclusion and claim preclusion, as the claims were brought in prior actions and the specific issues addressed were previously litigated by parties in privity to those actions. Grenga also argues that his conduct and assertions in this matter do not constitute defamation *per se*. However, Grenga's allegations of criminal conduct and assertions relative to Vantell in his professional capacity as an appraiser made to the Department of Commerce, allegations that were knowingly false, fit the definition of defamation *per se.* Grenga also asserts the trial court erred in finding he frivolously filed the instant matter. The trial court did not abuse its discretion in concluding that Grenga's conduct was frivolous pursuant to R.C. 2323.51 as he has continued, in several tribunals over several years, to pursue claims against Vantell with the knowledge that his assertions are false and are not presented in good faith based on existing law, an extension of existing law and are not reasonably calculated towards the formation of any new law. Grenga also assigns as error a number of procedural decisions made by the trial court, none of which rise to an abuse of discretion.

{¶55} Based on the foregoing, Grenga's assignments of error are overruled and the judgment of the trial court is affirmed in full.

Robb, J., concurs.

Yarbrough, J., concurs.