IN THE SUPREME COURT OF OHIO

RONALD E. DULA,	:	Supreme Court Case No. 2021-0825
APPELLANT,	:	On Appeal from the Hamilton County Court of Appeals, First Appellate District
VS.	:	
	:	Court of Appeals Case No. C2000297
CITY OF CINCINNATI, ET AL.	:	
APPELLEES.	:	

MEMORANDUM IN OPPOSITION TO JURISDICTION OF THE DEFENDANT-APPELLEES, MARK MAGNER, M.D., MATTHEW SHULER, ESQ., AND THE CHRIST HOSPITAL

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EXPLANATION AS TO WHY THIS CASE DOES NOT PRESENT A CONSTITUTIONAL QUESTION OR INVOLVE A MATTER OF GREAT PUBLIC INTEREST

The instant action does not present any sort of constitutional question. Nor is it a matter of great public interest. In fact, as is evident from the memorandum in support of jurisdiction filed by Plaintiff-Appellant, Ronald Dula (hereinafter "Appellant"), this matter does not present any question at all. It is merely the latest in a succession of attempts by Appellant to secure retribution against those who have failed to meet his expectations or accede to his many demands. In short, this ongoing litigation is the product of Appellant's own personal dissatisfaction.

The events giving rise to this matter began in 2015-2016, when Appellant sought out care and treatment for chronic back pain and related orthopaedic problems from which he had been suffering for some time and for which he could find no relief. He underwent surgery, which was performed by Defendant-Appellee, Mark Magner, M.D., and was not happy with the results. Appellant threatened Dr. Magner and the hospital where he practiced (The Christ Hospital) with litigation and demanded that he be paid for what he deemed to be poor care. Finding no apparent support for Appellant's threats, the Defendant-Appellees respectfully declined his demand for payment. Appellant consulted with potential counsel (Finney Law Firm) about his care and potential claims, but soon realized that he did not have a legitimate basis upon which to assert liability against Dr. Magner directly.

Unsatisfied as he was, Appellant sought to enlist the assistance of others to prosecute his action for him, albeit in a less direct manner. Specifically, Appellant attempted to initiate criminal prosecution of Dr. Magner. To that end, Appellant consulted with a number of municipal and county officials, none of whom found good cause to

prosecute Dr. Magner and the hospital. When those officials declined to pursue the matter further, Appellant became more frustrated and sought to take matters into his own hands. He proceeded to file a succession of state and federal lawsuits, in which he has asserted claims against all those he perceives to have wronged him along the way.

As the record in this case will demonstrate, virtually every individual who has endeavored to assist Appellant with his complaints has found herself/himself a Defendant in this seemingly interminable litigation. The implicated include medical professionals, corporate executives, elected city and county officials, members of local law enforcement, and several experienced attorneys. Through this appeal, Appellant seeks to extend his personal quest for reprisal beyond its reasonable shelf life.

Appellant has now filed four separate actions, alleging the same operative facts and claims for relief. Each of the courts that has evaluated Appellant's claims, state and federal alike, has found them to be illegitimate and unenforceable. Despite the numerous judicial determinations of absolute non-viability that have been rendered on the very facts presented herein, Appellant petitions this Court to grant him leave to present them yet again. The question of merit aside, Appellant's prosecution of those he perceives to have wronged him is not a matter of constitutional significance or great public interest. To the contrary, it is intensely personal, punitive, and has now progressed to the point of being vexatious. For those reasons more fully discussed herein, the Defendant-Appellees, Mark Magner, M.D., Matthew Shuler, Esq., and The Christ Hospital (referenced collectively herein as "Hospital Appellees), respectfully submit that the facts and circumstances of this case do not merit further appellate review.

STATEMENT OF THE CASE

Counterstatement of Relevant Facts

This litigation finds its origins in the medical care and treatment that Appellant received in 2015-2016. It was then that Appellant sought out care from Mark Magner, M.D., a board certified neurosurgeon, for treatment of symptoms associated with his chronic degenerative spinal conditions. Despite the care provided by Dr. Magner, which included surgery, Appellant continued to have residual symptoms and became intensely dissatisfied. As a result, Appellant threatened to sue Dr. Magner and The Christ Hospital ("TCH") (the facility where his surgical care had occurred), if they did not pay him a substantial sum of money to allay his dissatisfaction. Appellant's pre-suit demands were directed to the attention of the hospital's General Counsel, Matthew Shuler, Esq. In response, Mr. Shuler and the hospital undertook a careful review of Appellant's care and his allegations of malpractice. In conducting its due diligence, the hospital found Appellant's allegations to be of no merit. Accordingly, Mr. Shuler responded to Appellant on behalf of the hospital and Dr. Magner and kindly explained the results of the hospital's investigation. Because the hospital perceived Appellant's claims to have no validity, it could not consider his demand for payment and respectfully declined to entertain it further.

Appellant was as ill-pleased with the response that he received from Mr. Shuler and TCH as he seemed to have been with the care that he received from Dr. Magner (hereinafter referenced collectively as "Hospital Appellees") and threatened to sue all three. He did not, however, immediately follow through on that threat. Instead of investing his own time and resources in such an endeavor, Appellant first sought to enlist the local authorities, hoping that they would do his bidding for him. To that end, Appellant

proceeded to issue separate requests to a number of different city and county officials, encouraging each of them to prosecute Dr. Magner and the hospital for the personal wrongs Appellant claimed to have suffered at his caregivers' hands. In the exercise of their own independent professional discretion and judgment, each of the various city and county officials who evaluated Appellant's allegations found them to be lacking in legitimacy. Therefore, those Appellees appropriately declined Appellant's invitation to take legal action on his behalf.

Procedural History and Present Posture

Finding equal dissatisfaction with the responses that he received from the hospital, the city, and the county to his varied demands, Appellant decided to initiate litigation on his own. He did so first by filing claims in the United States District Court for the Southern District of Ohio. *Dula v. Hamilton County Prosecutor's Office, et al*., Case No. 1:18-cv-00620 (hereinafter "*Dula I*") *(Plaintiff's Complaint* (Sept. 5, 2018)). The District Court determined that Appellant had failed to state a claim for which relief could be granted against any of the Appellees and summarily dismissed Appellant's entire action. *Id*. (*Report and Recommendation*; *Decision and Entry*; and *Judgment Entry* (Oct. 24, 2018)). No appeal of the U.S. District Court's judgment entry was ever initiated.

Appellant chose instead to seek relief at the state level. He, therefore, very soon thereafter commenced an action in the Hamilton County Court of Common Pleas, wherein he asserted express claims of malfeasance against TCH and Matthew Shuler, Esq., the hospital's General Counsel. *Dula v. Hamilton County Prosecutors Office, et al.*, Hamilton County C.P. No. A1806009 (hereinafter "*Dula II*") (*Plaintiff's Complaint* (Nov. 6, 2018)). Although not specifically named as a party to this action, Plaintiff did include in his complaint some implicit allegations of negligence against Dr. Magner. See *id*. The

predominate part of Appellant's initial pleading in *Dula II*, however, was devoted to claims of conspiratorial wrongdoing against a bevy of municipal and county authorities, many of whom he had previously sued in federal court and some of whom he had not. See *id*. Appellant also alleged that Mr. Shuler, TCH, and the various other Appellees had all conspired together to defraud him by providing false information in "an attempt to cover up the assault committed by Dr. Magner" and deprive Appellant of the many millions of dollars in relief to which he claimed to be entitled. *Id*. at p. 1, 3, 8-11. In *Dula II*, Appellant sought damages for "pain, suffering, and mental distress." *Id*. at p. 1-3, 5.

The various Appellees filed separate motions to dismiss. After the matter was fully briefed by the parties, the Trial Court took the matter under submission. Although Appellant attempted to characterize his claims against the Hospital Appellees as conspiracy and fraud claims, the Trial Court aptly determined that what Appellant had actually asserted were medical claims. In light of the foregoing, the Trial Court correctly concluded that Appellant's claims against the Hospital Appellees were barred by the statute of limitations and dismissed Appellant's claims in *Dula II* with prejudice to refiling. See *id*. (*Judgment Entry Granting Hospital Defendants' Motion to Dismiss* (June 20, 2019)). The Trial Court likewise determined that Appellant had failed to assert cognizable claims against the various other Appellees as well. Those claims were dismissed contemporaneously by way of separate judgment entries. No appeal of the Trial Court's rulings in *Dula II* was ever initiated.

Completely undeterred by the unsuccessful resolution of his prior actions, Appellant refiled his claims in the Hamilton County Court of Common Pleas, seeking an alternative disposition of the same action that had just been dismissed. *Dula v. Hamilton County Prosecutors Office, et al.*, Hamilton County C.P. No. A1906021 (hereinafter "*Dula*

III") (*Plaintiff's Complaint* (Dec. 30, 2019)). Appellant's refiled complaint was an abstruse and highly disjointed reiteration of his prior claims against the Hospital, City, and County Appellees, all of whom Appellant had also previously sued. See *id*. In addition, Appellant's refiled action included new claims against the Finney Law Firm, the attorneys whom Appellant had consulted about asserting medical negligence claims against Dr. Magner and the hospital months prior. *Id*.

The Appellant's refiled state complaint did not satisfy the basic requirements for pleading under Ohio law. See Ohio R. Civ. P. 8 and 10. It was, nevertheless, accepted by the Trial Court. Despite the complaint's vituperative tone, narrative structure, and overt lack of clarity, it was quite evident from Appellant's refiled pleading that he was simply reiterating the very same claims that he had asserted against these and the other Appellees in his prior action(s).

In response, the Hospital Appellees answered Appellant's refiled complaint and filed a motion for summary judgment. The motion for summary was premised upon the doctrine of res judicata and its application to Appellant's refiled action. Similar motions were interposed by the other Appellees and all associated issues were fully briefed. Appellant's request for oral argument was granted by the Trial Court and Appellant was afforded the opportunity to be fully heard on all related issues at oral argument. He pled his case to the Court at length. The matter was then taken under submission by the Trial Court. After further consideration, the Trial Court granted the Hospital Appellees' motion and entered summary judgment on their behalf. *Entry Granting Hospital Defendants' Motion for Summary Judgment* (July 24, 2020) (*Dula III*). Similar determinations were made on Appellant's claims against the other Appellees, resulting in a complete adjudication of Appellant's third action.

Unlike his prior state and federal court actions, Appellant did initiate an appeal of the Trial Court's decision in *Dula III*. The matter was fully briefed in and argued to the First District Court of Appeals. The Appellate Court, upon considering the record and arguments of the parties, concluded that Appellant's claims were not legally enforceable. In its decision, the First District Court of Appeals took notice of the fact that Appellant had "filed a total of three lawsuits, all consisting of substantially similar claims." *Opinion and Judgment Entry*, Case No. C-200297, ¶ 4 (May 19, 2021). The Appellate Court went on to find that, despite Appellant's efforts to characterize his claims as arising in "tort law, fraudulent conspiracy, and civil conspiracy," it was evident from the record that Appellant's claims against the Hospital Appellees all "stem[med] from the surgeries performed by Dr. Magner." *Id*. at ¶¶ 8-9. The First District Court of Appeals agreed with the Trial Courts below and found that Appellant's claims against the Hospital Appellees were indeed medical claims barred by the statute of limitations. It confirmed that the claims against the Hospital Appellees had been appropriately dismissed on both occasions by the Trial Courts that considered them. Specifically, the First District Court of Appeals concluded that Appellant was "attempting to circumvent the one-year statute of limitations for medical claims set forth in R.C. 2305.113(A)" by characterizing his claims against these Appellees as arising in fraud and conspiracy. *Id*. at ¶ 12.

Rather than immediately appealing the First District Appellate Court's decision, Appellant decided to first initiate an entirely new action asserting the same claims. To that end, on June 14, 2021, Appellant filed a motion to proceed in forma pauperis in the U.S. District Court for the Southern District of Ohio. See *Dula v. Hamilton County Prosecutors Office, et al.*, Case No. 1:21-cv-00403 (hereinafter "*Dula IV*"). Appellant's complaint in *Dula IV* reasserted each of his thrice dismissed claims against these and

other Appellees. The U.S. District Court subsequently issued a Report and Recommendation that Appellant's complaint be dismissed without prejudice and noted that "an appeal of any Order adopting this Report and Recommendation would not be taken in good faith *** ." As such, it was suggested that Appellant be denied "leave to appeal in forma pauperis." *Report and Recommendations* (June 25, 2021) (*Dula IV).* Recognizing the apparent futility of his efforts to rekindle his claims in federal court, Appellant returned his attention to the matter at hand, filing his notice of appeal and memorandum in support of jurisdiction with this Court, wherein he requested reversal of the First District Court of Appeals' May 19, 2021 determination that had stemmed from *Dula III*.

RESPONSES TO APPELLANT'S PROPOSITIONS OF LAW

Appellant's memorandum in support of jurisdiction does not present any actual propositions of law. Nevertheless, in the interest of completeness and caution, the Hospital Appellees respectfully offer the following responses to the points of law raised in his jurisdictional memorandum that appear to be applicable to each of them.

Response to Proposition of Law No. 1:
Any claim asserted in a civil action against a physician, hospital, or employee thereof, constitutes a "medical claim" under Ohio law and is subject to the limitations set forth in Revised Code 2305.113.

Under Ohio law, it is clear that the form in which an action is pleaded does not dictate its nature or the statute of limitations that should apply. "In determining which limitation period will apply, courts must look to the actual nature or subject matter of the case, rather than to the form in which the action is pleaded. The grounds for bringing the action are the determinative factors, the form is immaterial." *Hambleton v. R.G. Barry Corp*., 12 Ohio St.3d 179, 183, 465 N.E.2d 1298 (1984). Stated more succinctly, litigants

do not define the nature of their own claims. It is courts that do so by applying the law to the facts with which they have been presented. Thus, the manner in which one describes, characterizes, or labels his claims is of no consequence to the question of their actual nature.

Although Appellant may argue otherwise, there has never been any real question as to the actual nature of his claims against the Hospital Appellees. They have always been medical claims. By his own admission, Appellant's claims against Dr. Magner and The Christ Hospital arise from the performance of his spinal fusion surgeries and the quality of the consent obtained for both. Although Appellant alleges that Dr. Magner had certain information during the course of treatment that was not clearly articulated to him or disclosed in a forthright manner, those allegations do not equate to fraud. The interactions between physician and patient were, in this instance, all directed to and parcel of an ongoing course of care that was intended to provide Appellant relief from his chronic spinal disease.

"Clever pleading cannot transform what are in essence medical claims into claims for fraud." *Hensley v. Durrani*, 1st Dist. No. C-130005, 2013-Ohio-4711, 2013 Ohio App. LEXIS 4934, p. 11; *McNeal v. Durrani*, 1st Dist. Nos. C-180554 and C-180634, 2019-Ohio-5351, 2019 Ohio App. LEXIS 5431, p. 13. Moreover, it is well settled that a plaintiff cannot circumvent the preclusive effects imposed by the law simply by framing or labeling his claims in a particular manner.

In this instance, the Trial Courts below acted both fairly and diligently in their efforts to assess the validity of Appellant's claims and the sufficiency of his pleadings. Each did so in a thorough, thoughtful, and impartial manner, affording Appellant every benefit of the doubt. As is evident from their orders, the Trial Courts carefully evaluated the facts

presented, applied the law, and determined that Appellant's claims against the Hospital Appellees were not timely filed. Because they arose out of Appellant's medical care and treatment, his claims against the Hospital Appellees were barred by the applicable statute of limitations, set forth in Revised Code 2305.113(A). *Judgment Entry Granting Hospital Defendants' Motion to Dismiss*, pp. 2-3 (June 20, 2019) (*Dula II*). Consistent with Ohio law, Appellant's subsequent refiling of the very same claims in a separate action led to a similar finding and a determination that Appellant's third action was barred by the doctrine of res judicata. *Judgment Entry Granting Hospital Defendants' Motion to Dismiss*, p. 1 (July 24, 2020) (*Dula III*). The validity of those findings were expressly confirmed by the First District Court of Appeals, when it affirmed the Trial Court's rulings. *Opinion and Judgment Entry*, pp. 5-6 (May 19, 2021) (*Dula III*).

Response to Proposition of Law No. 2:

> Civil conspiracy is a malicious combination of two or more persons to injure another person or another's property in a manner that could not be accomplished by an individual alone.

In order to establish a viable cause of action for civil conspiracy, a plaintiff must assert, at the very least, "a malicious combination, involving two or more persons, that caused injury to a person or property, in addition to the existence of an unlawful act independent from the conspiracy." *LaSalle Bank, N.A. v. Kelly*, 9th Dist. No. 09CA00067-M, 2010-Ohio-2668, ¶ 33. In this instance, it is clear that the Appellant failed to meet his initial burden by pleading a viable claim for conspiracy against the Hospital Appellees. The claim for civil conspiracy that Appellant alleged against the hospital and its General Counsel, Matthew Shuler, Esq., were appropriately determined by the Trial Courts below to be without merit.

Appellant's contention that there was a conspiracy to prevent the prosecution of

Dr. Magner was erroneous for several reasons. For starters, no private citizen has a constitutionally protected interest in the criminal prosecution of others. See *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973). That fact notwithstanding, as the Trial Courts recognized, that Hospital Appellees had no role in the determination of whether Dr. Magner would be prosecuted by the city or the county. That determination was made entirely by the municipal and county officers entrusted with the responsibility for enforcing the law, all of whom enjoyed absolute immunity for their decisions surrounding the prosecution of cases. *Vos v. Cordray*, 719 F. Supp.2d 832, 840-841 (N.D. Ohio 2010); *Carlton v. Davisson*, 104 Ohio App.3d 636, 650 (6th Dist. 1995).

Similarly, Appellant's suggestion that Mr. Shuler somehow conspired with the hospital by whom he was employed to deprive Appellant of the remuneration that he demanded for his alleged injuries was not at all a legally enforceable claim. The hospital, acting through its General Counsel, was well within its rights to decline to entertain Appellant's demand for settlement of unasserted claims that had no underlying merit. The Trial Courts below concurred.

More to the point, members of the same collective entity do not constitute two separate "people" for purposes of establishing a conspiracy. This important point was not at all lost on the Trial Courts below. See *Judgment Entry Granting Hospital Defendants' Motion to Dismiss*, p. 1-2 (June 20, 2019) (*Dula II*). They were correct in finding that Appellant's claims for conspiracy against the Hospital Appellees were legally invalid. *Id*. Appellant did not appeal the judgment rendered in his initial state action (*Dula II*). Appellant, therefore, had no right to relitigate those very same conspiracy claims in his subsequent refiled action against these and other Appellees. *Judgment Entry Granting Hospital Defendants' Motion to Dismiss*, p. 1 (July 24, 2020) (*Dula III*). Nor did he have

proper standing to question the merit of the Trial Court's initial determination of those claims. For these reasons and others, the Appellate Court's ultimate affirmation of the Trial Courts' findings was not rendered in error.

Response to Proposition of Law No. 3:

The doctrine of res judicata serves to preclude any and all claims that were previously adjudicated on the merits in, or could have been litigated as a part of, a prior action.

This Court has stated that, "A final judgment or decree rendered upon the merits, without fraud or collusion by a court of competent jurisdiction, … is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with the parties." *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67, paragraph one of the syllabus (1943); see, also, *Whitehead v. Gen. Tel. Co.,* 20 Ohio St.2d 108, 254 N.E.2d 10, paragraph one of the syllabus (1969). The doctrine of res judicata establishes that a cause of action may not be relitigated once it has been adjudicated on the merits. It is a doctrine of finality, the purpose of which is to assure an end to litigation and to prevent a party from being vexed twice for the same cause. See *LaBarbera v. Batsch*, 10 Ohio St. 2d 106, 113 (1967).

In keeping therewith, the doctrine of res judicata similarly applies to any and all claims that could have been litigated as a part of a prior action. See *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382, 1995-Ohio-331. Thus, parties are obligated to present all related causes of action together, lest they be barred from doing so at a later date. It is well settled that the dismissal of an action pursuant to Civil Rule 12(B)(6) operates as an adjudication on the merits. Accordingly, under the doctrine of res judicata, such a dismissal is a bar to any future action asserting the same claim, or any related claims that could have been asserted previously. *Kastl v. McPherson*, 2nd Dist. No. 8389, 1984 WL

4423 (March 23, 1984).

Appellant's inability to establish a legitimate basis for relief against the Appellees has not been for want of effort on Appellant's part. Rather, it has been due to the fact that Appellant's allegations of wrongdoing have been entirely lacking in merit. As the record plainly demonstrates, Appellant has filed not one, not two or three, but four separate legal actions, all based on the very same set of operative facts and involving the same set of legal claims. Every court that has considered Appellant's claims has found them to be legally unenforceable and dismissed them with prejudice. In that regard, all of his actions have succumbed to a similar fate…and yet, Appellant persists. As noted above, just a few days prior to submitting his memorandum in support of jurisdiction to this Court, Appellant initiated another new action in the United States District Court for the Southern District of Ohio (*Dula IV*), which is based upon the very same facts and circumstances that were litigated in each of Appellant's three prior actions.

Appellant's inability to obtain the relief he desires has had nothing to do with a broad scale interparty conspiracy. Nor has it had anything to do with the judiciary's desire to deprive him of his rights by refusing to apply the law correctly, as he has suggested. Rather, Appellant's inability to find legal traction for his claims stems from the fact that they simply are not viable under Ohio law. Because Appellant's claims against the Hospital Appellees were previously asserted and dismissed with prejudice (being both untimely and unenforceable) in a prior action, the Trial Court below was correct to enter judgment for the Hospital Appellees. A final judgment or decree rendered upon the merits "is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them." *Norwood*, 142 Ohio St. at 299, paragraph one of the syllabus. The First District Court of Appeals clearly recognized this fact and was

correct in its affirmation of the Trial Court's judgment in *Dula III*. There was nothing about its determination that would satisfy the requirements for further appellate review.

CONCLUSION

Considering Appellant's memorandum in support of jurisdiction, the nature and substance of his claims, and the law applicable thereto, there is no basis for further discretionary review of this matter. This case does not present a constitutional question or a matter of great public interest. Nor does it involve any novel theory of law. The Trial and Appellate Courts below all made careful examination of Appellant's claims and rendered thoughtful determinations based upon well-settled principles of law. Appellant simply remains deaf to the voice of reason and unwilling to accept the rule of law. Accordingly, Hospital Appellees, Mark Magner, M.D., Matthew Shuler, Esq., and The Christ Hospital, respectfully request that this Court deny Appellant's request for further discretionary review of this action and the propositions that appear to be suggested in Appellant's jurisdictional memorandum.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of July, 2021, a true copy of the foregoing was served via First Class U.S. Mail or electronic mail (if available) upon the following:

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