

FILED
 Lorain County Common Pleas Court
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 Tom Orlando, Clerk of Courts

**IN THE COURT OF COMMON PLEAS
 LORAIN COUNTY, OHIO**

GIBSON BROS., INC., et al.,

Plaintiffs,

-vs.-

OBERLIN COLLEGE, etc., et al.,

Defendants.

Case No.: 17CV193761

Judge: Hon. John R. Miraldi

Magistrate: Hon. Joseph Bott

**PLAINTIFFS' & NONPARTY ALLYN D. GIBSON'S BRIEF REGARDING THE
 COURT'S JURISDICTION TO DETERMINING PENDING MOTION FOR ACCESS TO
 SEALED CASE DOCUMENTS**

I. INTRODUCTION

Plaintiffs¹ and Non-party Allyn D. Gibson ("ADG") submit this Brief pursuant to the Court's February 10, 2020 Journal Entry which requested briefing on whether the Court had jurisdiction to rule on Movants² Motion for Access to Sealed Documents (the "Motion").

As to the question of jurisdiction, Plaintiffs and ADG submit the Court does not have jurisdiction until the pending appeal is completed because the parties do not know whether

¹ "Plaintiffs" refers collectively to Gibson Bros., Inc. ("Gibson's Bakery"), David R. Gibson ("Dave Gibson"), and Allyn W. Gibson ("Grandpa Gibson").

² "Movants" refers collectively to WEWS-TV ("WEWS"), Advance Ohio ("Advance"), and the Ohio Coalition for Open Government ("OCOG").

Defendants³ will seek to overturn or otherwise modify the Court's September 16, 2019 Journal Entry denying Defendants' previous attempt to unseal the materials covered by the Motion.

Moreover, even if the Court has jurisdiction to consider the Motion, the Court should still exercise its considerable discretion by either denying the Motion or, at least, holding the Motion in abeyance until the pending appeal is completed.

II. LAW & ARGUMENT

A. The Court does not have jurisdiction to consider any matter that is inconsistent with the Ninth District's jurisdiction.

There is a pending appeal of Plaintiffs' judgment against Defendants and as a result, the Court's jurisdiction is very limited. The Court is "divested of jurisdiction over matters that are inconsistent with the reviewing court's jurisdiction to reverse, modify, or affirm the judgment." *State ex rel. Rock v. School Emp. Retirement Bd.*, 96 Ohio St.3d 206, 2002-Ohio-3957, 772 N.E.2d 1197, ¶ 8. See *State ex rel. Florence v. Zitter*, 106 Ohio St.3d 87, 2005-Ohio-3804, 831 N.E.2d 1003 (2005). The trial court and appellate court cannot assert jurisdiction over the same matter or issue. *Lambda Research v. Jacobs*, 1st Dist. No. C-050464, 170 Ohio App.3d 750, 2007-Ohio-309, 869 N.E.2d 39, ¶ 21, citing *Kane v. Ford Motor Co.*, 17 Ohio App.3d 111, 477 N.E.2d 662 (8th Dist.1984). As a result, the trial court retains jurisdiction only over those issues not involved with the subject matter of the appeal. *Id.*

At present, no appellate briefs have been filed with the Ninth District and thus, the parties to that appeal have yet to fully define the scope of their requested appellate relief. This means the Court, Plaintiffs, and ADG do not yet know whether Defendants' will seek to reverse or modify the Court's September 16, 2019 Journal Entry denying Defendants' previous attempt to unseal the materials at issue. We do know that Defendants submitted a notice of appeal to the Ninth

³ "Defendants" refers to Defendants, Oberlin College and Meredith Raimondo.

District which shows Defendants have retained the ability to challenge that previous order. While Defendants did not specifically list the September 16, 2019 Journal Entry within their notice of appeal, they ended the notice by saying they intended to appeal "all interlocutory orders merged into the judgment." The September 16, 2019 Journal Entry certainly falls within that broad category of interlocutory orders.

There indeed is a risk for inconsistent treatment of the sealed materials. For instance, the Ninth District could affirm the Court's denial of the previous unsealing attempt. This Court could separately decide (although Plaintiffs and ADG still contend the merits are lacking) the Motion should be granted and order the materials unsealed. These are inconsistent positions and as a result, the Court cannot entertain the Motion until such time as the pending appeal is fully adjudicated.

B. Even if the Court has jurisdiction, the Court should exercise its considerable discretion by denying the Motion.

Plaintiffs and ADG submit that Movants failed to meet their burden of having the materials at issue unsealed. The merits, or in this case the lack of merits, for the Motion have already been fully briefed by the parties, and Plaintiffs and ADG will not re-hash them here.

As detailed within the parties' previously filed briefs, the Court has significant discretion on whether to unseal the previously sealed materials. Movants have a high burden to meet under either theory presented to the Court – constitutional arguments and Ohio R. Sup. 45. Movants have failed to meet their burden for both arguments. Thus, the Court should exercise that discretion by denying the Motion.

Moreover, the Court's review of the Motion should be shaped by a critical fact which Movants failed to deny when Plaintiffs and ADG raised the same. Plaintiffs and ADG asserted and supported the existence of substantial connections between Movants and Defendants'

counsel, including the fact that Defendants' lead counsel, Ron Holman, II, was a television legal analyst for Movant WEWS-TV for more than ten (10) years. (See, Ex. I attached to Plaintiffs and ADG's BIO to Mtn, p. 1). It appears Defendants are attempting to use nonparties to this litigation to circumvent the Court's previous denial of Defendants' similar motion to unseal these materials. Movants did not refute these assertions or the evidence supporting the same. Defendants did not separately move to dispel these assertions. As a result, these assertions are correct – Defendants are using the Movants to accomplish what they themselves failed to do. The Court should not permit this to occur.

In the end, the Motion appears to be nothing more than a backdoor attempt by Defendants to continue the smear campaign against Plaintiffs and dox ADG. As the Court may recall, the entire Gibson family were subjected to significant threats of violence during and after the defamatory protests in November of 2016. ADG specifically was the victim of vicious threats of harm and actual physical injury. Movants did nothing to dispel this notion and as a result, the Court should exercise its discretion by denying the Motion.

III. CONCLUSION

Therefore, for the foregoing reasons, Plaintiffs and nonparty ADG respectfully submit that the Court does not have jurisdiction to consider the Motion at present but must wait until the pending appeal has been fully adjudicated. However, if the Court were to conclude that it has jurisdiction, it should exercise its considerable discretion by denying the Motion or, at least, holding the Motion in abeyance until the pending appeal is completed.

DATED: March 11, 2020

Respectfully submitted,

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