

20CA011648

FILED
LORAIN COUNTY
2020 JUN -4 P 2:29
COURT OF COMMON PLEAS
TOM ORLANDO

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LORAIN COUNTY, OHIO

FILED
LORAIN COUNTY
2020 JUN -4 P 2:29
COURT OF COMMON PLEAS
TOM ORLANDO

GIBSON BROS. et al.

Plaintiffs,

vs.

OBERLIN COLLEGE, et al.

Defendants

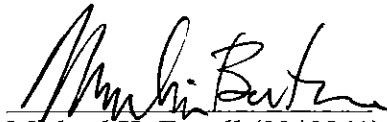
) Common Pleas Case No. 17CV192761

) JUDGE JOHN R. MIRALDI

) 9th APPELLATE DISTRICT

) NOTICE OF APPEAL

Now comes WEWS-TV, and hereby gives notice that it is appealing to the Ninth District Court of Appeals, Lorain County, Ohio, from the May 5, 2020 entry and final judgment on WEWS-TV's Motion for Access to Sealed Case Document.



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Counsel for WEWS-TV

ORIGINAL



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

**TOM ORLANDO, Clerk
JOURNAL ENTRY
John R. Miraldi, Judge**

Date 4/29/20

Case No. 17CV193761

GIBSON BROS INC
Plaintiff

JACQUELINE BOLLAS CALDWELL
Plaintiff's Attorney (-)

VS

OBERLIN COLLEGE
Defendant

JOSH M MANDEL
Defendant's Attorney (-)

**ENTRY AND RULING ON NON-PARTIES'
MOTION FOR ACCESS TO SEALED CASE DOCUMENT**

This matter comes before the Court upon non-parties WEWS-TV, Advance Ohio, and the Ohio Coalition for Open Government's Motion for Access to Sealed Case Document, seeking an order unsealing Exhibit G to the Affidavit of Attorney Cary M. Snyder, counsel for Oberlin College and Meredith Raimondo in the above-case. The above case has concluded, and an appeal of the judgment is pending before the Ninth District Court of Appeals.

Following the conclusion of the trial in this matter, the Defendants filed a similar motion which the Court denied on September 8, 2019. Now, the above-mentioned non-parties have filed a motion arguing that under Sup. R. 45, the Court should unseal the exhibit. The exhibit at issue contains unauthenticated Facebook postings purportedly belonging to non-party Allyn D. Gibson. After the movants initial motion, the Court asked the parties to brief the issue of jurisdiction in light of the pending appeal. Each party then submitted a short brief regarding jurisdiction over the unsealing in addition to their briefing on the movants initial motion to unseal.

Ohio Sup. R. 45 addresses public access to Court records in a variety of different contexts. Ohio Sup. R. 45(F) states:

1. Any person, by written motion to the court, may request access to a case document or information in a case document that has been granted restricted public access pursuant to division (E) of this rule. The court shall give notice of the motion to all parties in the case and, where possible, to





the non-party person who requested that public access be restricted. The court may schedule a hearing on the motion

2. A court may permit public access to a case document or information in a case document if it finds by clear and convincing evidence that the presumption of allowing public access is no longer outweighed by a higher interest. When making this determination, the court shall consider whether the original reason for the restriction of public access to the case document or information in the case document pursuant to division (E) of this rule no longer exists or is no longer applicable and whether any new circumstances, as set forth in that division, have arisen which would require the restriction of public access.

Here, access was originally restricted to Exhibit G under the parties' Mutual Protective Order. That order was agreed-to by the parties and approved and entered by the Court on June 8, 2018. The contents of Exhibit G and their admissibility was at issue during pretrial motions in limine, at which time, a preliminary ruling was issued that these materials could not be utilized as character evidence, but the Court withheld ruling on their admissibility for other purposes. The Defendants made no attempt to introduce the contents of Exhibit G for any reason, nor did they call or attempt to call non-party Allyn D. Gibson as a witness during trial.

At this juncture, the Court, under Ohio Sup. R. 45(F)(2) must consider whether the original reason for restricting public access no longer exists, and whether any new circumstances identified in Sup. R. 45(E) have arisen which would require the continued restriction of public access. The Court, having considered all of the factors in Sup. R. 45(E), hereby finds that the continued restriction of public access is warranted. Of particular importance is Sup. R. 45(2)(c), which includes the risk of injury to persons, individual privacy rights and interests, and fairness of the adjudicatory process. Because of the nature of the information at issue in Exhibit G, the Court also finds that there is no less restrictive alternative to complete restriction.

IT IS SO ORDERED.


John R. Miraldi, Judge

cc: All Parties



Bertke, Melissa D.

From: Traci Orlando <orlandot@loraincounty.us>
Sent: Tuesday, May 05, 2020 1:21 PM
To: ktownsend@rcfp.org; Farrell, Michael; benjamin.sasse@tuckerellis.com; Matthew Nakon; Julie Crocker; Ronald D. Holman, II; orarric@kwgd.com; Terry Moore; Lee Plakas; James Taylor; Bertke, Melissa D.
Subject: Fw: GIBSON BROS VS OBERLIN COLLEGE (17CV193761)
Attachments: 20200505131437284.pdf

[External Email: Use caution when clicking on links or opening attachments.]

From: DO_NOT_REPLY@JUDGEMIRALDI_SCANNER.COM <DO_NOT_REPLY@JUDGEMIRALDI_SCANNER.COM>
Sent: Tuesday, May 5, 2020 1:14 PM
To: Traci Orlando
Subject:

This E-mail was sent from "RNPBDBB38" (Aficio MP 3010).

Scan Date: 05.05.2020 13:14:37 (-0400)
Queries to: DO_NOT_REPLY@JUDGEMIRALDI_SCANNER.COM

COURT OF APPEALS OF OHIO
NINTH APPELLATE DISTRICT

20CA011648

Docketing Statement

Appeal No.

COURT OF APPEALS

A time-stamped copy of the final judgment being appealed must be attached to this statement.

FILED
LORAIN COUNTY

FILED
LORAIN COUNTY

2020 JUN -4 P 2:29

2020 JUN -4 P 2:29

Trial Court Name Court of Common Pleas, Lorain County, Ohio
Trial Court Caption Gibson ORLANDO, et al.
(Name of first plaintiff)

Trial Court Case Number CV193761
TOM ORLANDO

versus

Trial Court Judge John R. Miraldi

Oberlin College, et al.
(Name of first defendant)

Date of judgment appealed May 5, 2020 (as entered)
9th APPELLATE DISTRICT

Was the time to appeal extended
by App.R. 4(B)? Yes X No

CALENDAR DESIGNATION

THIS APPEAL SHOULD BE ASSIGNED TO:

- Regular Calendar.
- Accelerated Calendar. See Loc.R. 21.
- Expedited Calendar (generally for appeals involving termination of parental rights). See App.R. 11.2.

THE RECORD

Mark the paragraph that applies.

TO THE CLERK OF COURTS: Please immediately assemble and transmit the record in this case. I certify that the paragraph I marked accurately describes the complete record to be filed:

1. The record will consist of **ONLY** the original papers, exhibits, a certified copy of the docket and journal entries, and any transcripts of proceedings that were filed in the trial court prior to final judgment.
2. The record will include the original papers and exhibits filed in the trial court, a certified copy of the docket and journal entries, and a full or partial transcript of proceedings prepared for this appeal by a court reporter appointed by the trial court, who I served with a praecipe that I also filed with this court. If only a partial transcript of proceedings is requested, see App.R. 9(B).
3. The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and a statement of the evidence or proceedings pursuant to App.R. 9(C) or an agreed statement of the case pursuant to App.R. 9(D).
4. The record will include the original papers and exhibits filed in the trial court and a certified copy of the docket and journal entries, and both a transcript of proceedings prepared by a court reporter appointed by the trial court and a statement of the evidence or case pursuant to App.R. 9(C) or (D). If only a partial transcript of proceedings is requested, see App.R. 9(B).

If you intend to rely upon a transcript of proceedings filed in an earlier appeal, you must seek permission from the court to supplement the record in this appeal with the transcript filed in the earlier appeal.

A time-stamped copy of the final judgment being appealed must be attached to this statement.
If the order appealed is not final and appealable under R.C. 2505.02, the Court must dismiss the appeal.

THE PARTIES

Please provide the following information for all parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc). **See Local Rule 3.**

If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. **Appellant must attach a copy of any order that resolved a claim against any of the parties.**

<p>Party's name <u>WEWS-TV</u></p> <p>Party's designation <u>Appellant</u></p> <p>Attorney's name <u>Melissa D. Bertke</u></p> <p>Attorney's registration number <u>0080567</u></p> <p>Address of counsel or party <u>Baker & Hostetler LLP, Key Tower,</u> <u>127 Public Square, Suite 2000, Cleveland, OH 44114</u></p> <p>Phone <u>(216) 861-7865</u> Fax <u>(216) 696-0740</u></p> <p>Email <u>mbertke@bakerlaw.com</u></p>	<p>Party's name <u>Gibson Bros., Inc</u></p> <p>Party's designation <u>Appellee</u></p> <p>Attorney's name <u>Owen J. Rarric</u></p> <p>Attorney's registration number <u>0075367</u></p> <p>Address of counsel or party <u>Krugliak, Wilkins, Griffiths & Dougherty</u> <u>Co. L.P.A., 4775 Munson St. NW, PO Box 36963, Canton, OH 36963</u></p> <p>Phone <u>(330) 497-0700</u> Fax <u>(330) 497-0700</u></p> <p>Email <u>orarric@kwgd.com</u></p>
<p>Party's name <u>Advance Ohio</u></p> <p>Party's designation <u>Movant</u></p> <p>Attorney's name <u>Melissa D. Bertke</u></p> <p>Attorney's registration number <u>0080567</u></p> <p>Address of counsel or party <u>Baker & Hostetler LLP, Key Tower,</u> <u>127 Public Square, Suite 2000, Cleveland, OH 44114</u></p> <p>Phone <u>(216) 861-7865</u> Fax <u>(216) 696-0740</u></p> <p>Email <u>mbertke@bakerlaw.com</u></p>	<p>Party's name <u>David R. Gibson</u></p> <p>Party's designation <u>Appellee</u></p> <p>Attorney's name <u>Owen J. Rarric</u></p> <p>Attorney's registration number <u>0075367</u></p> <p>Address of counsel or party <u>Krugliak, Wilkins, Griffiths & Dougherty</u> <u>Co. L.P.A., 4775 Munson St. NW, PO Box 36963, Canton, OH 36963</u></p> <p>Phone <u>(330) 497-0700</u> Fax <u>(330) 497-0700</u></p> <p>Email <u>orarric@kwgd.com</u></p>
<p>Party's name <u>Ohio Coalition for Open Government</u></p> <p>Party's designation <u>Movant</u></p> <p>Attorney's name <u>Melissa D. Bertke</u></p> <p>Attorney's registration number <u>0080567</u></p> <p>Address of counsel or party <u>Baker & Hostetler LLP, Key Tower,</u> <u>127 Public Square, Suite 2000, Cleveland, OH 44114</u></p> <p>Phone <u>(216) 861-7865</u> Fax <u>(216) 696-0740</u></p> <p>Email <u>mbertke@bakerlaw.com</u></p>	<p>Party's name <u>Allyn W. Gibson</u></p> <p>Party's designation <u>Appellee</u></p> <p>Attorney's name <u>Owen J. Rarric</u></p> <p>Attorney's registration number <u>0075367</u></p> <p>Address of counsel or party <u>Krugliak, Wilkins, Griffiths & Dougherty</u> <u>Co. L.P.A., 4775 Munson St. NW, PO Box 36963, Canton, OH 36963</u></p> <p>Phone <u>(330) 497-0700</u> Fax <u>(330) 497-0700</u></p> <p>Email <u>orarric@kwgd.com</u></p>

THE PARTIES (cont.)

Please provide the following information for **all** parties to the proceedings in the trial court.

A party who files a notice of appeal is an appellant. A party who would be adversely affected if the judgment below is reversed should be designated as an appellee. All other parties to the action below should retain their trial court designation (plaintiff, defendant, third-party plaintiff, third-party defendant, petitioner, respondent, etc). **See Local Rule 3.**

If a party was not represented by counsel in the proceedings below, please provide the address and phone number of the party. If there are additional parties and/or attorneys, please copy this page, complete the information for the additional parties, and attach it to this statement. **Appellant must attach a copy of any order that resolved a claim against any of the parties.**

<p>Party's name <u>Allyn D. Gibson</u></p> <p>Party's designation <u>Appellee</u></p> <p>Attorney's name <u>Owen J. Rarric</u></p> <p>Attorney's registration number <u>0075367</u></p> <p>Address of counsel or party <u>Krugliak, Wilkins, Griffiths & Dougherty Co. L.P.A., 4775 Munson St. NW, PO Box 36963, Canton, OH 36963</u></p> <p>Phone <u>(330) 497-0700</u> Fax <u>(330) 497-0700</u></p> <p>Email <u>orarric@kwwgd.com</u></p>	<p>Party's name <u>Oberlin College</u></p> <p>Party's designation <u>Defendant</u></p> <p>Attorney's name <u>Ronald D. Holman, II</u></p> <p>Attorney's registration number <u>0036776</u></p> <p>Address of counsel or party <u>Taft Stettinius & Hollister LLP, 200 Public Square, Suite 3500, Cleveland, OH 44114-2302</u></p> <p>Phone <u>(216) 241-2838</u> Fax <u>(216) 241-3707</u></p> <p>Email <u>rhoman@taftlaw.com</u></p>
<p>Party's name <u>Dr. Meredith Raimondo</u></p> <p>Party's designation <u>Defendant</u></p> <p>Attorney's name <u>Ronald D. Holman, II</u></p> <p>Attorney's registration number <u>0036776</u></p> <p>Address of counsel or party <u>Taft Stettinius & Hollister LLP, 200 Public Square, Suite 3500, Cleveland, OH 44114-2302</u></p> <p>Phone <u>(216) 241-2838</u> Fax <u>(216) 241-3707</u></p> <p>Email <u>rhoman@taftlaw.com</u></p>	

GENERAL INFORMATION

Was a stay requested in the trial court? Yes No

If a stay was requested, how did the trial court rule? Granted Denied Pending

If this case has previously been before this Court, list prior appellate case number(s): _____

List case names and numbers of cases pending in this court that involve the same transaction or controversy involved in this appeal: Gibson Bros., Inc., et al. v. Oberlin College, et al., Court of Appeals No. 19CA011563

Probable issues for appeal: Whether the trial court erred in denying Appellant's motion for access to a sealed case document pursuant to Ohio Superintendence Rule 45(F)

CRIMINAL CASE

Misdemeanor Felony
 Trial Guilty/No contest plea

Charges _____

Sentence _____

Type of Appeal: Defendant's Appeal as of Right State's Appeal as of Right
 Defendant's Appeal by Leave of Court State's Appeal by Leave of Court

CIVIL CASE

Type of action in trial court? Motion for access to sealed case document pursuant to Ohio Sup. R. 45(F)

Did the judgment dispose of all claims by and against all parties? Yes No

If not, is there a determination that there is "no just reason for delay?" Civ.R. 54(B). Yes No

Have the parties previously participated in mediation of this dispute? Yes No

Would a mediation conference assist in the resolution of this matter? Yes No Maybe

Must this case be expedited as being one of the following types of cases? Yes No


App.R. 11.2(B) or (C) appeals (abortion without parental consent, adoption, and parental rights)

App.R. 11.2(D) appeals (dependent, abused, neglected, unruly, or delinquent child appeals)

Appeal under determination of local fiscal emergency brought by municipal corporation

Election contests as provided in R.C. 3515.08

I CERTIFY THAT THE ABOVE INFORMATION IS ACCURATE TO THE BEST OF MY KNOWLEDGE AND THAT I HAVE ATTACHED A COPY OF THE FINAL JUDGMENT FROM WHICH THIS APPEAL IS TAKEN.



Signature of Counsel (or party if not represented by counsel)