

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

WILLIAM D. FOX	:	
Plaintiff	:	CASE NO. 2013 CVC 01684
vs.	:	2014 CVC 00965
DENISE A. ASKREN	:	Judge McBride
Defendant	:	DECISION/ENTRY

William D. Fox, *pro se* plaintiff, 104 Regatta Drive, New Richmond, Ohio 45157.

Finney Law Firm, LLC, Bradley M. Gibson, counsel for the defendant Denise Askren, 4270 Ivy Pointe Boulevard, Suite 225, Cincinnati, Ohio 45245.

This cause is before the court for consideration of a motion to consolidate filed by the defendant Denise Askren.

The court scheduled and held a hearing on the motion on August 15, 2014. At the conclusion of the hearing, the court took the issues raised by the motion under advisement.

Upon consideration of the motion, the record of the proceeding, the oral and written arguments of counsel and the plaintiff appearing *pro se*, and the applicable law, the court now renders this written decision.

FACTS OF THE CASES AND PROCEDURAL BACKGROUND

In case number 2013 CVC 1684, the plaintiff William Fox brings a claim for “malicious prosecution and filing a deceptive police report” against the defendant Denise Askren. It is unclear whether Count two of that complaint, which sets forth a claim for “willful harassment and reckless violation of Fox’s civil rights,” is in part brought against Askren or was instead limited to the New Richmond Police Department and Sgt. Leslie Smith, who have since been dismissed from this action.

The malicious prosecution claim involves Askren’s filing of a complaint against Fox with the New Richmond Police Department, in which she alleged that Fox had committed a violation of a protection order, and an accompanying contempt claim in the protection order action, both involving Fox’s action of asking their minor son to hand-deliver a proposed summer calendar to Askren.

Askren filed counterclaims in the 2013 case for (1) intentional infliction of emotional distress (for various alleged actions committed by Fox including videotaping and photographing Askren, looking through her trash, and violating the protection order); (2) invasion of privacy (for essentially the same conduct); and (3) trespass (also for essentially the same conduct as it relates to entering upon Askren’s real property).

In case number 2014 CVC 965, the plaintiff Fox brings a claim for slander against Denise Askren. There is a lengthy “Introduction” section of the complaint which sets forth some of the history between the parties, including the 2013 incident which led to Fox’s arrest, which forms the basis of the malicious prosecution claim in the 2013 case.¹ That section ends with the statement “Askren continues spreading false defamations that Fox is sinister, abused her during their 27 year marriage, is to be feared by his children, and now lies to many other people that Fox committed serious crimes. * * * ”² In the “Factual Background” section, the plaintiff does not identify any particular act of slander, other than again mentioning Askren’s claim that she was being abused.³ The paragraph in the section in which Fox sets forth a factual allegation which he “attests and affirms” also does not indicate the specific statement(s) alleged to constitute slander nor does it indicate to whom specifically such statements were made.

However, in paragraph one of the complaint, the plaintiff states that “Askren * * * has knowingly and willfully initiated and propagated malicious and fictional tales and innuendo that Fox committed criminal acts of property vandalism[;]” and that “Fox recently learned of Askren’s slanderous action via multiple sources, detailing variations of Askren’s claim that Fox damaged property.”⁴ He indicates that the “ * * * proliferation of these lies have damaged Fox’s reputations and personal relationships within certain circles, including realtors associated with Fox’s business activity and his friends, and Fox has reason to believe that the falsehoods have promulgated to some of their

¹ Complaint for Slander and Defamation of Character with Demand for Damages at ¶¶ 1-7.

² Id. at ¶ 7.

³ Id. at ¶ 13.

⁴ Id. at ¶ 1.

biological children.”⁵ At the hearing on this matter, the plaintiff indicated that he has “been accused of breaking into property.”

The court scheduled and held a telephone conference on September 26, 2014 for the purpose of clarifying whether the alleged acts of property vandalism at issue in the 2014 complaint were in any way related to the acts set forth by Askren in her counterclaims in the 2013 case. The plaintiff explained during the telephone conference that the acts of alleged vandalism referred to by Asken in her statements to neighbors and realtors related to two residences, one located at Kemper Lane and the other at Judd Hill, which are not related to Askren’s residence, which is the property at issue in the counterclaims in the 2013 case. Counsel for the defendant agreed that any issues surrounding those two properties were not directly related to the 2013 case, although he reiterated his argument that the two cases would likely have some facts in common.

LEGAL ANALYSIS

Pursuant to Civ.R. 42(A)(1), “[w]hen actions involving a common question of law or fact are pending before a court, that court after a hearing may order a joint hearing or trial of any or all the matters in issue in the actions; it may order some or all of the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” “When considering consolidation, a trial court must determine if there is sufficient commonality of issues and parties to warrant

⁵ Id.

consolidating the cases.”⁶ “Further, the court should consider whether consolidation would save time and resources.”⁷ “A consolidation of cases lies within the sound discretion of the trial court.”⁸

While not all questions of law and fact must be identical in order for two cases to be consolidated⁹, there must be some common questions of law and fact pending in both cases. Other than background facts relating to the relationship between the two parties, the court does not find questions of law or fact which are pending in both cases that would warrant consolidation. There is not a sufficient commonality of issues to warrant consolidating the cases and consolidation would not result in saving the court or the parties any significant amount of time or resources. As a result, the motion for consolidation shall be denied.

CONCLUSION

The motion to consolidate filed by the defendant is not well-taken and is hereby denied.

⁶ *Siuda v. Howard*, 1st Dist. Hamilton Nos. C-000656 and C-000687, 2002-Ohio-2292, *3, citing, *Jamestown Village Condo. Owners Assn. v. Market Media Research, Inc.*, 96 Ohio App.3d 678, 687, 645 N.E.2d 1265, 1272 (8th Dist.1994); *Waterman v. Kitrick*, 60 Ohio App.3d 7, 14, 572 N.E.2d 250, 256 (10th Dist.1990).

⁷ *Id.*, citing, *Waterman* at 14.

⁸ *Clemente v. Gardner*, 5th Dist. Licking No. 2002CA00120, 2004-Ohio-2254, ¶ 16, citing, *Director of Highways v. Kleines*, 38 Ohio St.2d 317, 313 N.E.2d 370 (1974).

⁹ *Id.* at ¶ 18.

IT IS SO ORDERED.

DATED: _____

Judge Jerry R. McBride

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the within Decision/Entry were sent by e-mail on this _____ day of October, 2014 to the following parties and/or counsel:

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