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

SHAWN COOLEY, et. al.	:	CASE NO. CVH 2023 0069
Plaintiffs,	:	JONATHAN P. HEIN,
	:	Judge by Assignment
vs.	:	
JOSEPH FOREMAN, et. al.	:	JUDGMENT ENTRY-
	:	Granting Plaintiffs' Motion
Defendants.	:	for Summary Judgment

This matter came before the Court upon Plaintiffs' motion for summary judgment filed December 5, 2025 pursuant to Civil Rule 56. Defendants filed a response on January 16, 2026. Plaintiffs filed a reply on January 27, 2026. The motion is ripe for decision.

Plaintiffs are represented on the complaint by Robert A. Klingler, Esq. Defendants are represented by David S. Osborne, Jr., Esq. Plaintiffs are represented on the counter-claim defense by David C. Moser, Esq., and Sarah L. McElroy, Esq. Amicus curiae participation was granted to various other persons by Entry filed May 19, 2023 but none have briefed the current motion.

**Standard of Review**

Summary judgment is a procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. *Norris v. Ohio Standard Oil Co.*, 70 Ohio St.2d 1 (1982). In order to prevail, the moving party bears the burden of showing that there is no genuine issue of material fact. *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64 (1978); *Celotex Corp.*

*v. Catrett*, 477 U.S. 317 (1986). A party seeking summary judgment on the grounds that a non-moving party cannot prove its case bears the initial burden of informing the trial court of the basis for the Motion and of identifying evidence in the record which demonstrates the absence of a genuine issue of material fact on the essential elements of the non-moving parties' claims. *Dresher v. Burt*, 75 Ohio St. 3d 280 (1996). Summary judgment is only appropriate if reasonable minds can only conclude based upon the evidence that judgment for the movant is appropriate. *Vahila v. Hall*, 77 Ohio St. 3d 421 (1997).

The evidence presented on a motion for summary judgment must be construed in favor of the party opposing the motion who is given the benefit of all favorable inferences that can be drawn from it. *Williams v. First United Church of Christ*, 37 Ohio St. 2d 150 (1974). "On summary judgment the inferences to be drawn from the underlying facts contained in [the affidavits, exhibits, and depositions] must be viewed in the light most favorable to the party opposing the Motion." *United States v. Diebold Inc.*, 369 U.S. 654 (1962). The Court must not engage in the weighing of credibility of the witnesses or the quality of their testimony. *Duke v. Sanymetal Products Co.*, 31 Ohio App.2d 78 (8<sup>th</sup> Dist. 1972).

Further, a non-moving party possesses a burden pursuant to Civil Rule 56 (E). "When a Motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Accordingly, a party opposing summary judgment must present evidence with respect to those elements which the opposing party must establish at trial. *Celotex Corp.*, *supra*.

## Analysis

### Counterclaims 1, 2, 3, 5: Conversion by Destruction and Alteration of Property

Defendants filed four claims for conversion based upon alleged destruction and alteration of their property by Plaintiffs. Each claim involves a different item of property: (Count 1) doors and trim; (Count 2) closet; (Count 3) security camera equipment; and (Count 5) cash. The theories of recovery are expressly based on the Restatement (2<sup>nd</sup>) of Torts (1965) and, accordingly, the Court's analysis is primarily based upon the same source.

Defendants recently clarified that their claims are based upon the following principles originating from *CompuServe Inc. v. Cyber Promotions, Inc.*, 962 F. Supp. 1015, 1020–21 (S.D. Ohio 1997) with regard to the nature of Defendants' claims and their elements of proof:

The scope of an action for conversion recognized in Ohio may embrace the facts in the instant case. The Supreme Court of Ohio established the definition of conversion under Ohio law in *Baltimore & O.R. Co. v. O'Donnell*, 49 Ohio St. 489, 32 N.E. 476, 478 (1892) by stating that:

[I]n order to constitute a conversion, it was not necessary that there should have been an actual appropriation of the property by the defendant to its own use and benefit. It might arise from the exercise of a dominion over it in exclusion of the rights of the owner, or withholding it from his possession under a claim inconsistent with his rights. If one takes the property of another, for a temporary purpose only, in disregard of the owner's right, it is a conversion. Either a wrongful taking, an assumption of ownership, an illegal use or misuse, or a wrongful detention of chattels will constitute a conversion.

*Id.* at 497–98, 32 N.E. 476; *see also Miller v. Uhl*, 37 Ohio App. 276, 174 N.E. 591 (1929); *Great American Mut. Indem. Co. v. Meyer*, 18 Ohio App. 97 (1924); 18 O. Jur.3d, Conversion § 17.

While authority under Ohio law respecting an action for trespass to chattels is extremely meager, it appears to be an actionable tort. *See State of Ohio v. Herbert*, 49 Ohio St.2d 88, 119, 358 N.E.2d 1090, 1106 (1976) (dissenting opinion) (“any workable cause of action would appear to be trespass to chattels”); *see also Greenwald v. Kearns*, 104 Ohio App. 473, 145 N.E.2d 462 (1957) (trespass on the rights of plaintiff in personal property is a precursor to an act in conversion); *Simmons v. Dimitrouleas Wallcovering, Inc.*, No. 14804, 1995 WL 19136, at \*2 (Ohio App. Jan.18, 1995) (the court of appeals acknowledged that trespass to chattel claims were barred because those claims were

dependent upon claimant's ownership of the subject personal property); *Klinebriel v. Smith*, No. 94CA1641, 1996 WL 57947, at \*2 (Ohio App. Feb.6, 1996) (where the court of appeals let stand a jury award on a "trespass against personal property" claim); *Springfield Bank v. Caserta*, 10 B.R. 57 (Bankr.S.D. Ohio 1981) (common law principles of trespass to chattels in Am.Jur.2d applied as controlling under Ohio law).

The Restatement § 217(b) states that a trespass to chattel may be committed by intentionally using or intermeddling with the chattel in possession of another. Restatement § 217, Comment e defines physical "intermeddling" as follows:

... intentionally bringing about a physical contact with the chattel. The actor may commit a trespass by an act which brings him into an intended physical contact with a chattel in the possession of another[.]

See Decision filed January 27, 2026.

Plaintiffs' motion for summary judgment sets forth several reasons why they assert that dismissal of these four claims is appropriate. First, Plaintiffs rely on their privilege to enter and damage property as explained in Restatement (2<sup>nd</sup>) of Torts (1965). Upon review of the Restatement, the Court finds the following privileges are determinative:

### **§ 213 Privilege to Break and Enter Enclosure or Building**

(1) One who is privileged to enter land is further privileged to break and enter a fence, or other enclosure or a dwelling or other building, if it is reasonably necessary, or is reasonably believed by the actor to be necessary, to accomplish the purpose of the privilege, where he is acting

(f) pursuant to a court order as stated in § 210, or

(h) under the circumstances stated in § 206 to recapture a person previously arrested, to prevent the commission of a crime or to make an arrest as stated in §§ 204, 205, and 207, or

(i) to execute civil process as stated in § 208(2) and § 209(2), or

### **§ 210 Entry Pursuant to Order of Court**

The privilege to execute an order of a court directing the actor to put a third person in possession of land of which another is in possession, or to do any other act on the land, carries with it the privilege to enter the land for the purpose of executing the order, provided that any writ issued for the execution of the order is valid or fair on its face.

### **§ 265 Duty or Authority Based Upon Public Interest**

One is privileged to commit an act which would otherwise be a trespass to a chattel or a conversion if he is acting in discharge of a duty or authority created by law to preserve the public safety, health, peace, or other public interest, and his act is reasonably necessary to the performance of his duty or the exercise of his authority.

In this case, it is uncontroverted that Plaintiffs' justification for entering Defendants' property was the execution of a judicially authorized search warrant. Defendants cannot make a claim for destruction and alteration to the premises when there is a privileged reason for entering the premises. There is no genuine issue of material fact that the judicially-authorized warrant was the basis for entering into Defendants' premises. Thus, any damage caused at the time of entrance is not compensable and Plaintiffs are entitled to summary judgment for this reason.

Second, Plaintiffs also claim that the conversion claims should be dismissed since the amount of damage claimed by Defendants is *de minimus*. As to this defense, the counterclaims allege an aggregate loss of \$8,900 on Counts 1, 2, 3 and 5. Whether this is a *de minimis* amount or not requires weighting the evidence. It is axiomatic that weighing evidence is not permitted when considering summary dismissal of claims. [citations omitted] Therefore, this justification for dismissal is inappropriate and Plaintiffs are not entitled to summary judgment.

Third, Plaintiffs claim there is no causal relationship between their conduct and the damage to property. A review of depositions demonstrates a lack of specificity as to the identity of the person(s) who forced entry into the house and purportedly caused destruction. [Eg. Newland depo at 75, 80-81; Shawn Cooley depo at 32-33; Justin Cooley depo at 27-28.] Instead, Plaintiffs aver that the entry was undertaken by non-party law enforcement officials.

The concept of proximate cause is easily understood from Ohio Jury Instruction

CV 405.01 Proximate cause:

1. GENERAL. A party who seeks to recover for (injury) (death) (damages) must prove not only that the other party was negligent, but also that such negligence was a (proximate) (direct) cause of the (injury) (death) (damages).

2. PROXIMATE CAUSE DEFINED. “(Proximate) (Direct) cause” is an act or failure to act that in the natural and continuous sequence directly produced the (injury) (death) (damages) and without which the (injury) (death) (damages) would not have occurred.

The Court agrees with Plaintiffs. In the absence of proof of the identity of the person(s) who actually caused the damage, named Plaintiffs cannot be held liable for the conduct of others merely because the named Plaintiffs were present at the scene of the search.<sup>i</sup> Plaintiffs are entitled to summary judgment on this basis.

Finally, based upon the Court’s research of the counterclaims for conversion, and related to the privilege analysis described under the Restatement (Torts), the Court finds Ohio case authority that a pre-requisite for any claim for conversion is that there must first be a trespass. As succinctly explained in *Greenwald v. Kearns*, 104 Ohio App. 473, 478 (8<sup>th</sup> Dist. 1957): “[u]nless there be a trespass, there cannot be an act of conversion which could be the subject of an action.” Here there is insufficient proof that Plaintiffs caused the entry; also, there was privilege to enter. Since there was no trespass, Plaintiffs are entitled to summary judgment on this basis under the common law of Ohio.

#### **Counterclaims 4, 6: Trespass to Chattels**

The findings and conclusion outlined above for the four claims alleging conversion are equally applicable for Counterclaims 4 and 6 involving trespass to chattels. These findings and conclusions are not re-stated but are incorporated herein as if fully rewritten. Plaintiffs are entitled to summary judgment on Counterclaims 4 and 6 for the reasons described above.



### **Counterclaim 7: Frivolous Conduct**

In this counterclaim, Defendants assert that Plaintiffs' litigation "serves to harass or maliciously injury" Defendants and the claims "are not warranted under existing law" or "a good faith argument for extension, modification or reversal of existing law..." Defendants claim that such conduct is a violation of Civil Rule 11 and R.C. 2323.51(A)(2) such that Defendants are entitled to sanctions.

The Court agrees with Plaintiffs that R.C.2323.51 does not create a separate cause of action to be asserted against another party. See *Shaver v. Wolske & Blue*, 138 Ohio App.3d 653,673 (10<sup>th</sup> Dist. 2000); *Wochna v. Mancino*, 2008-Ohio-996 (9<sup>th</sup> Dist.). Thus, this claim cannot be presented to the trier of fact as part of the trial.

However, after there is a final decision herein, there is nothing to prevent any party from later petitioning the Court to consider whether such sanctions should be considered post-verdict.

### **Counterclaim 8: Illegal Search and Seizure**

Defendants' counterclaim alleges that there was an illegal search and seizure in violation of the Fourth Amendment to the United States Constitution for which Defendants desire to hold Plaintiffs responsible. However, for the following reasons, this claim must fail.

First, only Plaintiff Brian Newland is alleged to have any involvement with issuance of the warrant by reason of being the affiant. Thus, claims against the remaining Plaintiffs for Fourth Amendment violations must be dismissed for lack of proximate cause.

Next, the validity of the warrant is a matter of law and not one for jury determination. The determination is whether the facts contained in the affidavit provide probable cause (or a reasonable belief) that there is a fair probability that evidentiary materials exist within the place to be searched. *Illinois v Gates*, 462 U.S. 312 (1983). In making this determination, great

deference should be given to the official making the probable cause determination. *Gates, supra.*; *State v. George*, 45 Ohio St.3d 325 (1989); Crim Rulle 41 ( C).

Plaintiffs' brief supporting their motion contains thorough and appropriate citation to the legal standards to apply when analyzing the validity of the warrant. Defendants' memorandum does not refute these legal standards. However, Defendants' memorandum (see pages 18 – 20) offers a narrative which would supposedly indicate misrepresentation of the facts by Plaintiff Newland to the judicial officer. These misrepresentations would arguably have altered the judicial officer's decision.

The Court, however, does not accept Defendants' narrative since it fails to cite either the record or depositions with specificity. Although it has read and searched the depositions, the Court possesses no duty to search out facts to construct an argument consistent with that offered by the Defendants. *Blount v. Schindler Elevator Corp.*, 2003-Ohio-2053 (10<sup>th</sup> Dist.), ¶ 40. Further, even if the alleged misrepresentations and omissions to the affidavit were considered in the manner that Defendants argue, the Court finds that there still existed sufficient facts in the affidavit to support a probable cause determination by the judicial officer.

Based upon a review of the affidavit, the Court finds that as a matter of law there exists probable cause for the issuance of the search warrant. Therefore, Plaintiffs are entitled to summary judgment on Counterclaim 8.

#### **Affirmative Defense: Governmental Immunity**

Next, Plaintiffs claim immunity from civil liability based on the provisions of R.C. 2744, known as the Ohio Political Subdivision Tort Liability Act. Determining whether members of a governmental entity are entitled to immunity entails a three tier analysis. *Cater v. Cleveland*, 1998-Ohio-421. The **first tier** of analysis is the general statement in R.C. 2744.02 (A)(1) which



provides the broad grant of immunity to political subdivisions for "damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function." The **second tier** of analysis requires a consideration of R.C. 2744.02(B) which sets forth five (5) categories of conduct where the grant of immunity does not apply and, therefore, where political subdivisions may be found liable for damages in connection with governmental or proprietary functions. The **third tier** of analysis may result in the political subdivision again being protected from liability if the defenses of R.C. 2744.03 apply.

Stated another way, was the conduct of Plaintiffs a governmental or proprietary function? Then, do any one of the five (5) categories of exemption apply? Finally, if there is no immunity, are there other available defenses which prevent the Plaintiffs from being sued?

In this case, the conduct of the police officers was clearly within their governmental duties of investigating criminal conduct and seizing evidence. So, did the Plaintiffs' conduct in causing damage while executing the search warrant fall within any of the exceptions to the immunity?

There is nothing in the record of this case which indicate that any Plaintiff acted in any manner except within their roles as participants in the law enforcement process. [Indeed, as previously noted, the identity of any Plaintiff as responsible for property damage has not been established.] Upon review of the statute, the Court finds no conduct which would remove the immunity provided by R.C. 2744. As such, Plaintiffs are entitled to immunity from civil liability granted by Chapter R.C. 2744. Plaintiffs are entitled to summary judgment for this reason.

### Affirmative Defense: Statute of Limitations

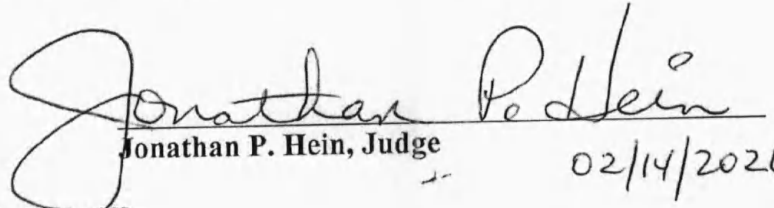
The Court acknowledges with appreciation the briefing by the parties on the statute of limitations. There is no disagreement that Defendants' counterclaims were timely filed for all conduct except the allegation of frivolous conduct (aka motion for sanctions) sent forth in Counterclaim 7. Not having to consider this affirmative defense at a time closer to trial is appreciated. [The propriety of the frivolous conduct (motion for sanctions) is not now adjudicated.]

### Conclusion

Based on the above analysis, the Court finds as follows: (1) there are no genuine issues of material fact such that counterclaims for conversion and trespass in Counts 1 through 6 are dismissed; and (2) there are no genuine issues of material fact such that claims for illegal search and seizure in Counterclaim 8 are dismissed.

**IT IS, THEREFORE, ORDERED AND DECREED** that Plaintiffs' motion for summary judgment is granted. Defendants' Counterclaims 1, 2, 3, 4, 5, 6 and 8 filed October 27, 2023 are dismissed.

All issues not having been resolved, this decision is not a final appealable order.

  
Jonathan P. Hein, Judge

02/14/2024

cc: Robert A. Klingler, Attorney for Plaintiffs  
David C. Moser / Sarah L. McElroy, Attorneys for Plaintiffs  
David S. Osborne, Jr., Attorney for Defendants  
Arthur S. West, as amicus curiae  
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Vera Eidelman, for amicus curiae ACLU

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<sup>i</sup> The counterclaims do not allege *respondeat superior* as a theory for recovery nor name the *sui juris* official for such theory. Therefore, this theory for recovery is not considered.