[Cite as *Evans v. Shapiro*, 2019-Ohio-3209.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ROSS COUNTY

WILLIAM EVANS, JR.,	:	
	:	Case No. 18CA3670
Plaintiff-Appellant,	:	
	:	
vs.	:	DECISION AND JUDGMENT
	:	ENTRY
RYAN SHAPIRO, ET AL.,	:	
	:	
Defendants-Appellees.	:	**Released: 07/23/19**

APPEARANCES:

William Evans, Jr., Youngstown, Ohio, Pro Se Appellant.

Zachary B. Simonoff, Simonoff Law, Elyria, Ohio, for Defendants-Appellees Ryan Shapiro, Rick Smith, JPay Corporation, and Securus Technologies.

Ashley Brooke Moody, Attorney General of Florida, and William H. Stafford III, Senior Assistant Attorney General of Florida, of the Florida Office of Attorney General, Tallahassee, Florida, for Defendants-Appellees Justices Pariente, Quince, Canady, Polston and Lawson of the Florida Supreme Court, Chief Judge Rothenberg of the Florida Third District Court of Appeal, and Judge Sanchez-Llorens of the Miami-Dade County Circuit Court.

McFarland, J.

{¶1} This is an appeal from the judgment of the Ross County Court of Common Pleas dismissing Appellant William H. Evans, Jr.'s Complaint under Civ.R. 12(B)(1) and 12(B)(6). On appeal, Appellant contends the trial court erred by (1) failing to grant his motion for default judgment before

considering Appellees' motions to dismiss; (2) dismissing his claim for damages caused by a criminal act under R.C. 2307.60 because a prior criminal conviction is not required to state a claim; and (3) granting Appellees' motions to dismiss for failure to state a claim under Civ.R. 12(b)(6). The trial court is presumed to have denied the motion for default judgment, however, and Appellees made a showing of excusable neglect supporting that denial. Appellant's first assignment of error is therefore overruled. We also find no merit in Appellant's second and third assignments of error because the Complaint does not contain factual allegations sufficient to meet the notice-pleading standard of Civ.R. 8 as to any of Appellant's claims. Accordingly, the trial court's decision is affirmed.

FACTS

{¶2} Appellant is an inmate of Northeast Ohio Correctional Center in Youngstown, Ohio, where he is serving a sentence of 15 years to life for a murder conviction. This case arises out of a lawsuit that Appellant brought in Florida state court against Appellees Ryan Shapiro, JPay Corporation ("JPay"), Rick Smith and Securus Technologies ("Securus") (together, the "Corporate Appellees"). In that case, Appellant alleged the Corporate Appellees were liable for breach of warranty for failing to repair or replace

an electronic tablet that he purchased from them. When the Corporate Appellees did not timely respond to his Florida complaint, Appellant filed a motion for default judgment against them. Before ruling on that motion, however, the Corporate Appellees filed a motion to dismiss the complaint. As a result, under the Florida Rules of Civil Procedure, the clerk was not permitted to enter a default in Appellant's favor.

{¶3} Appellant then filed a Writ of Mandamus in the Florida Supreme Court, which referred the matter to the Florida Third District Court of Appeal. The appellate court denied the Writ of Mandamus. *See Evans v. Shapiro*, 229 So.3d 414 (Fla. Dist. Ct. App. 2017). Appellant's petition for review in the Florida Supreme Court was also denied. *Evans v. Shapiro*, No. SC17-1716, 2018 WL 258853 (Fla. Jan. 2, 2018). The Corporate Appellees' motion to dismiss the Florida complaint remains pending in the trial court.

{¶4} Appellant subsequently brought this case in the Ross County Court of Common Pleas against the Corporate Appellees and Justices Pariente, Quince, Canady, Polston and Lawson of the Florida Supreme Court, Chief Judge Rothenberg of the Florida Third District Court of Appeal, and Judge Sanchez-Llorens of the Miami-Dade County Circuit Court (together, the "Judicial Appellees") as defendants. The Judicial Appellees are all of the Florida jurists who presided over or entered any

ruling in Appellant's Florida case. Appellant's Complaint in this case, which incorporates his complaint in the Florida case, alleges the Corporate Appellees conspired with the Judicial Appellees to protect the Corporate Appellees from any liability on Appellant's claims in the Florida courts.

{¶5} Appellant served the Complaint on the Corporate Employees and Judicial Employees by certified mail pursuant to Civ.R. 4.3(B)(1) and 4.1(A)(1). Service was complete on June 7, 2018, which made the deadline to respond July 5, 2018 under Civ.R. 12(A)(1).

{¶6} On July 12, 2018, Appellant moved for a default judgment against all Appellees under Civ.R. 55(A) for failure to timely respond to the Complaint. On July 16, 2018, attorney Zachary B. Simonoff entered an appearance on behalf of defendants Shapiro and JPay and moved for an order granting them until August 13, 2018 to respond to the Complaint. Simonoff explained that he had just been retained as counsel and required additional time to prepare his clients' response. On July 19, 2018, the trial court granted the motion for additional time to respond to the Complaint.

{¶7} On July 24, 2018, attorney Jerod M. Rigoni moved for permission to appear pro hac vice on behalf of the Judicial Appellees. On the same day, the Corporate Appellees filed a motion to dismiss the Complaint under Civ.R. 12(b)(1) and (6).

{¶8} On July 27, 2018, the trial court granted all of the Corporate Appellees leave until August 13, 2018 to respond to the Complaint. (Its prior order had named only Shapiro and JPay.) On July 30, 2018, the Corporate Appellees filed a supplement to their motion for leave to plead. They noted that, under *Miller v. Lint*, 62 Ohio St.2d 209, 404 N.E.2d 752 (1980), a party who files a pleading or pre-answer motion after the expiration of the twenty-eight day answer period must put forth some showing of excusable neglect to prevent a default judgment from being entered under Civ.R. 55(a). They then explained that their counsel was notified of the case on July 10, 2018, five days after the answer date. Counsel then filed notices of appearance, a motion for leave to plead, and a motion to dismiss. Corporate Appellees also attached an affidavit from the general counsel for Securus and JPay explaining the delay in retaining Ohio counsel in the case. He stated the Florida service rules do not permit service by certified mail on a corporate defendant. As a result, the general counsel did not realize until after he contacted local counsel that service had been completed and the deadline to answer had passed.

{¶9} On August 9, 2018, the Judicial Appellees filed a Motion to Dismiss the Complaint and, four days later, they filed a motion for additional time to plead. As did the Corporate Appellees, the Judicial

Appellees explained that they were unaware that service by certified mail was permitted under the Ohio Rules of Civil Procedure. The Judicial Appellees also presumed the Ohio courts lacked jurisdiction over the Florida judicial branch—a position also asserted in their motion to dismiss. As soon as the Judicial Appellees' Florida counsel consulted with an attorney licensed in Ohio and learned that service was arguably proper, he immediately began searching for Ohio counsel to sign onto his motion to appear pro hac vice. As soon as the trial court granted the motion to appear pro hac vice, the Judicial Appellees' counsel filed the motion for additional time to plead. On August 21, 2018, the trial court granted their motion for additional time to respond to the Complaint.

{¶10} On September 18, 2018, Appellant filed a motion asking the trial court to rule on his motion for default judgment before ruling on the motions to dismiss. It should be noted that Appellant also had renewed his motion for default judgment in his responses to Appellees' motions for additional time to plead. On October 11, 2018, without addressing the motion for default judgment, the trial court entered its order granting the Corporate Appellees' and Judicial Appellees' respective motions to dismiss the Complaint. Appellant appeals the order granting the motions to dismiss, which is a final appealable order under Rev. Code 2505.02(B)(1).

ASSIGNMENTS OF ERROR

"I. DID'NT [SIC] THE TRIAL COURT ERR IN FAILING TO DECIDE THE MERITS OF EVANS'S CLAIMS UNDER THE MOTION FOR DEFAULT JUDGMENT [BEFORE] IT EVEN CONSIDERED ANY MOTIONS BY DEFENDANT'S [SIC]?

DID'NT [SIC] THE TRIAL COURT ERR IN FAILING TO FIRSTLY GRANT THE MOTIONS FOR LEAVE TO FILE LATE AND GRANT THEM ONLY BASED UPON LEGAL AUTHORITY DEFINING 'EXCUSABLE NEGLECT', BEFORE IT PROCEEDED TO DISMISS?

DID ANY DEFENDANT CITE LEGALLY AMPLE GROUNDS FOR 'EXCUSABLE NEGLECT'?

II. DOES O.R.C. § 2307.60 (CIVIL ACTION FOR CRIMINAL ACT) REQUIRE THAT A PRIOR PROSECUTION AND CONVICTION OCCUR AS A PRELUDE TO THE RIGHT TO CIVIL SUIT?

III. DID PLAINTIFF EVANS STATE A 'COGNIZABLE LEGAL CLAIM' TO THE TRIAL COURT?

DID DEFENDANT'S [SIC] MOTIONS TO DISMISS VIOLATE CIV. R. 11 AS SHAM AND FALSE WHEN THEY FILED SAID MOTIONS WITHOUT GOOD GROUNDS TO SUPPORT IT UNDER EXISTING LAW; AND

DID THEY ACCORDINGLY MULTIPLY THE PROCEEDINGS VEXATIOUSLY BY DOING SO IN EFFECT STALLING OR FORECLOSING RELIEF? DID THE TRIAL COURT AID IN SUCH MULTIPLIED PROCEEDINGS (WHICH INCLUDES THIS APPEAL)?"

ASSIGNMENT OF ERROR I

{¶11} In his first assignment of error, Appellant contends that the trial court erred by failing to decide the merits of his motion for default judgment before granting Appellees' motions to dismiss the Complaint. He further

contends that Appellees failed to show excusable neglect for their failure to timely respond to the Complaint, which prompted Appellant's motion for default judgment. In sum, Appellant contends the trial court should not have permitted Appellees additional time to respond to the Complaint and should have granted his motion for default judgment.

STANDARD OF REVIEW

{¶12} "A trial court's decision to either grant a default judgment in favor of the moving party, or allow the defending party to file a late answer pursuant to Civ.R. 6(B)(2) upon a finding of excusable neglect, will not be reversed absent an abuse of discretion." *Huffer v. Cicero*, 107 Ohio App.3d 65, 74, 667 N.E.2d 1031, 1036 (4th Dist. 1995); citing *Miller v. Lint*, 62 Ohio St.2d 209, 404 N.E.2d 752 (1980) and *McDonald v. Berry*, 84 Ohio App. 3d 6, 616 N.E.2d 248 (8th Dist. 1992). "[T]he determination of whether neglect was excusable or inexcusable 'must of necessity take into consideration all the surrounding facts and circumstances.' " *Marion Prod. Credit Ass'n v. Cochran*, 40 Ohio St.3d 265, 271, 533 N.E.2d 325, 331 (1988); quoting *Griffey v. Rajan*, 33 Ohio St.3d 75, 79, 514 N.E.2d 1122 (1987) (internal quotes omitted). "Courts must also remain mindful of the admonition that cases should be decided upon their merits, where possible, rather than on procedural grounds." *Cochran* at 271 (citing *Griffey* at 79).

The term "abuse of discretion" connotes more than an error of law or judgment and implies that the court's decision is unreasonable, arbitrary or unconscionable. *Rowe v. Stillpass*, 4th Dist. Lawrence No. 06CA1, 2006-Ohio-3789, ¶ 10.

ANALYSIS

{¶13} The trial court granted the Corporate Appellees' and Judicial Appellees' motions for leave to plead, which each then supplemented those motions with additional information to support a finding of excusable neglect. Appellant is correct that the trial court never entered an order denying his motion for default judgment. When a trial court fails to rule on a motion, however, this Court will presume that the motion was overruled. *See Columbus Mortg., Inc. v. Morton*, 10th Dist. Franklin No. 06AP-723, 2007-Ohio-3057, ¶ 66.

{¶14} Appellant relies on *Miller v. Lint*, 62 Ohio St.2d 209, 404 N.E.2d 752 (1980), to argue that the trial court should not have permitted Appellees additional time to respond to the Complaint. In *Miller*, the Supreme Court of Ohio held that a trial court abused its discretion when it granted leave to plead after the answer date had passed without some showing of excusable neglect by the moving party. *Miller* at 214.

{¶15} In contrast to *Miller*, in this case Appellees made a showing of excusable neglect. Both the Corporate Appellees and Judicial Appellees cited their misunderstanding of the service rules in Ohio as compared to those in Florida. The Judicial Appellees also had reason to doubt they were subject to the jurisdiction of the Ohio state courts. In addition, neither the Corporate Appellees nor the Judicial Appellees substantially delayed the proceedings. Both acted quickly, in light of the fact that they required Ohio counsel, after learning that the service upon them had been proper. Thus, the trial court's determination of excusable neglect was reasonable and not an abuse of discretion. Appellant's first assignment of error is overruled.

ASSIGNMENTS OF ERROR II and III

{¶16} The Court considers Appellant's second and third assignments of error together because they are both premised on the contention that the trial court erred in granting Appellees' motions to dismiss. In his second assignment of error, Appellant contends that the trial court erred in dismissing his claim under R.C. 2307.60 (civil action for a criminal act) because he did not need to plead a prior criminal conviction to state a claim. In his third assignment of error, Appellant contends the trial court erred by granting the motion to dismiss in three ways. First, Appellant asks whether he alleged a "cognizable claim" in his Complaint. Second, he asks whether

Appellees violated Civ.R. 11 by filing frivolous motions to dismiss. Third, he asks if Appellees vexatiously multiplied the proceedings by bringing the motions to dismiss—again implying that the motions were frivolous. As discussed below, the trial court did not err in granting the motions to dismiss in their entirety. Additionally, notwithstanding the fact that Appellant failed to raise the issue of sanctions before the trial court, Appellees cannot be liable under Civ.R. 11 for bringing meritorious motions.

STANDARD OF REVIEW

{¶17} "A motion to dismiss for failure to state a claim upon which relief can be granted tests the sufficiency of the complaint." *Volbers–Klarich v. Middletown Mgt., Inc.*, 125 Ohio St.3d 494, 2010–Ohio–2057, 929 N.E.2d 434, ¶ 11. A trial court may dismiss a complaint under Civ.R. 12(B)(6) for failure to state a claim if it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to the relief sought. *Ohio Bur. Of Workers' Comp. v. McKinley*, 130 Ohio St.3d 156, 2011–Ohio–4432, 956 N.E.2d 814, ¶ 12; *Rose v. Cochran*, 4th Dist. Ross No. 11CA3243, 2012–Ohio–1729, ¶ 10. When a trial court considers a Civ.R. 12(B)(6) motion to dismiss, it must review only the complaint, accepting all factual allegations contained in the complaint as true and making all reasonable inferences in favor of the

nonmoving party. *State ex rel. Talwar v. State Med. Bd. of Ohio*, 104 Ohio St.3d 290, 2004–Ohio–6410, 819 N.E.2d 654, ¶ 5. Furthermore, the trial court "cannot rely on evidence or allegations outside the complaint to determine a Civ.R. 12(B)(6) motion." *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207, 680 N.E.2d 985 (1997).

{¶18} "Under the notice pleading requirements of Civ.R. 8(A)(1), the plaintiff need only plead sufficient, operative facts to support recovery under his claims." *Henderson v. State*, 8th Dist. Cuyahoga No. 101862, 2015-Ohio-1742, ¶ 10; citing *Doe v. Robinson,* 6th Dist. Lucas No. 1–07–1051, 2007–Ohio–5746, ¶ 17. "Nevertheless, to constitute fair notice, the complaint must still allege sufficient underlying facts that relate to and support the alleged claim, and may not simply state legal conclusions." *Id.*; citing *DeVore v. Mut. of Omaha Ins. Co.*, 32 Ohio App.2d 36, 38, 288 N.E.2d 202 (7th Dist. 1972).

{¶19} "Appellate courts review de novo a dismissal for the failure to state a claim." *Hammond v. Perry*, 4th Dist. Hocking No. 12CA27, 2013–Ohio–3683, ¶ 11; citing *Allen v. Bryan*, 4th Dist. Hocking No. 12CA15, 2013–Ohio–1917, ¶ 7; *Bartley v. Hearth & Care of Greenfield, L.L.C.*, 4th Dist. Highland No. 12CA13, 2013–Ohio–279, ¶ 11. "In other words, an appellate court affords no deference to a trial court's decision and, instead,

applies its own, independent review to determine if the Civ.R. 12(B)(6) requirements were satisfied." *Hammond* at ¶ 11; citing *McDill v. Sunbridge Care Ents., Inc.*, 4th Dist. Pickaway No. 12CA8, 2013–Ohio–1618, ¶ 10; *Estep v. State*, 4th Dist. Ross No. 09CA3088, 2009–Ohio–4349, ¶ 5.

ANALYSIS

{¶20} Appellant brought five claims in his Complaint: (1) a claim for violation of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. 1961; (2) a claim for violation of Ohio's civil RICO statute, R.C. 2934.34; (3) a claim for violation of his constitutional rights under color of state law pursuant to 42 U.S.C. 1983; (4) a claim for damages caused by the commission of a criminal act under R.C. 2307.60; and (5) a claim for declaratory judgment under R.C. 2721.02. The Court considers each of Appellant's claims in turn below.

A. Federal RICO Claim

{¶21} "To prevent organized crime from 'obtaining a foothold in legitimate business,' Congress created a civil cause of action for RICO violations." *In re ClassicStar Mare Lease Litig.*, 727 F.3d 473, 483 (6th Cir. 2013); quoting *Doe v. Roe*, 958 F.2d 763, 768 (7th Cir. 1992). Under the RICO statute, "[a]ny person injured in his business or property by reason of

a violation of section 1962 of this chapter may sue therefor ... and shall recover threefold the damages he sustains." 18 U.S.C. 1964(c).

{¶22} This court surmises, as did the trial court, that Appellant's RICO claim was brought pursuant to 18 U.S.C. 1962(c), which makes it unlawful to "conduct or participate, directly or indirectly, in the conduct" of an enterprise through a pattern of racketeering activity. To plead a violation of Section 1962(c), a plaintiff must allege (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 496, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). In addition, civil RICO plaintiffs must show that the RICO violation was the proximate cause of an injury to their business or property. *Holmes v. Sec. Investor Prot. Corp.*, 503 U.S. 258, 265-68, 112 S.Ct. 1311, 117 L.Ed.2d 532 (1992).

{¶23} The United States Supreme Court has ruled that liability for participating in the "conduct" of the enterprise extends only to those who "have some part in directing [the enterprise's] affairs." *Reves v. Ernst & Young*, 507 U.S. 170, 176–78, 113 S.Ct. 1163, 122 L.Ed.2d 525 (1993). The term "enterprise" is defined as including "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity," 18 U.S.C. 1961(4), and includes "both legitimate and illegitimate enterprises within its scope."

United States v. Turkette, 452 U.S. 576, 580, 101 S.Ct. 2524, 69 L.Ed.2d 246 (1981). Racketeering activity is defined as an assortment of state and federal crimes, including any act or threat involving specified state-law crimes, any act indictable under specified federal statutes, and certain federal offenses. 18 U.S.C. § 1961(1); *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 232, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). A "pattern" of racketeering activity requires at least two predicate acts. *H.J. Inc.*, 492 U.S. at 237. Once two predicate acts are established, the plaintiff must further establish a " 'relationship between the predicates' " and the " 'threat of continuing activity.' " *United States v. Blandford*, 33 F.3d 685, 703 (6th Cir.1994); quoting *H.J. Inc.*, 492 U.S. at 239.

{¶24} Appellant does not plead sufficient facts to state a claim under the RICO statute. He alleges only one predicate act, namely the Corporate Appellees' alleged refusal to honor the warranty on the tablet he purchased. The Judicial Appellees' alleged participation in this predicate act, by denying his claims in the Florida courts, does not transform this predicate act into multiple acts. It remains a single act. *See Dunham v. Indep. Bank of Chicago*, 629 F.Supp. 983, 990 (N.D. Ill. 1986). The failure to allege a "pattern" of racketeering activity warrants dismissal of Appellants' RICO claim against both the Corporate Appellees and Judicial Appellees.

B. Ohio RICO Claim

{¶25} Appellant's claim under Ohio's RICO statute is subject to dismissal for the same reason that his federal RICO claim was dismissed—the failure to allege more than one predicate act. Ohio's RICO statute was modeled after the federal statute. Accordingly, a RICO offense under the Ohio statute is also "dependent upon a defendant committing two or more predicate offenses." *State v. Miranda*, 138 Ohio St.3d 184, 2014-Ohio-451, 5 N.E.3d 603, ¶ 13. As Appellant alleged only one act, his claim under Ohio's RICO statute was properly dismissed.

C. Section 1983 Claim

{¶26} A claim under 42 U.S.C. 1983 has two elements. "First, a plaintiff must allege that a defendant acted under color of state law. Second, a plaintiff must allege that the defendant's conduct deprived the plaintiff of rights secured under federal law." *Handy-Clay v. City of Memphis, Tenn.*, 695 F.3d 531, 539 (6th Cir. 2012); citing *Fritz v. Charter Twp. of Comstock*, 592 F.3d 718, 722 (6th Cir. 2010). Defendants act under color of state law when they exercise power "possessed by virtue of state law and made possible only because [they are] clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49, 108 S.Ct. 2250, 101 L.Ed.2d 40 (1988).

{¶27} Appellant failed to allege any acts by the Corporate Appellees under color of state law. The Complaint alleges only that Rick Smith is the CEO of JPay Corporation and that Rick Smith is the CEO of Securus Technologies. They are alleged to have sold Appellant an electronic tablet and then to have failed to repair it in accordance with its warranty. There are no allegations that those acts were "clothed with the authority of state law."

{¶28} Appellant also fails to allege the violation of any federal right. Appellant does not specify what federal right was allegedly violated and none of the acts described in the Complaint give rise to such a violation. The Corporate Appellees' alleged actions amount to nothing more than a breach-of-contract action. The Judicial Appellees have absolute immunity under Section 1983 for their judicial acts, with the lone exception of those alleged to have been clearly outside of their jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 356, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978). Appellant does not allege any acts outside of the Judicial Appellees' jurisdiction, much less clearly outside of that jurisdiction.

{¶29} Appellant's Section 1983 claim was properly dismissed.

D. Civil Action for Criminal Act

{¶30} R.C. 2307.60(A)(1) provides:

> Anyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law, may recover the costs of maintaining the civil action and attorney's fees if authorized by any provision of the Rules of Civil Procedure or another section of the Revised Code or under the common law of this state, and may recover punitive or exemplary damages if authorized by section 2315.21 or another section of the Revised Code.

In *Jacobson v. Kaforey*, 2016-Ohio-8434, 149 Ohio St. 3d 398, 75 N.E.3d 203, the Supreme Court of Ohio held that R.C. 2307.60 creates a civil cause of action for damages resulting from any criminal act, unless otherwise prohibited by law. *Kaforey* at ¶ 10. The Supreme Court of Ohio declined to opine, however, on what a plaintiff must prove to prevail on a claim under R.C. 2307.60 because it was outside the scope of the question certified for review.

{¶31} Appellant argues that a plaintiff need not show the defendant has been convicted of a predicate criminal act to state a claim under R.C. 2307.60. This is a reasonable argument based on *Kaforey*, even though the Supreme Court of Ohio expressly did not decide that issue. That the issue remains unresolved is underscored by the United States District Court for the Northern District of Ohio's recent certification of the following question to the Supreme Court of Ohio: "Does [R.C.] 2307.60's creation of a civil

cause of action for injuries based on a 'criminal act' require an underlying criminal conviction?" *Buddenberg v. Weisdack*, 2018-Ohio-4288, 153 Ohio St.3d 1502, 109 N.E.3d 1259 (2018); *see Buddenberg v. Weisdack*, No. 1:18-CV-00522, 2018 WL 3949557 (N.D. Ohio Aug. 17, 2018). The Supreme Court of Ohio has not yet ruled in the case.

{¶32} Here, even if we assume Appellant is correct, he still fails to state a claim because he does not allege the criminal statute that Defendants allegedly violated. In the Florida case, he alleged the Corporate Appellees breached a warranty, which is not a criminal act. In this case, Appellant alleges "these Florida Court's [sic] are in direct conspiracy with the JPay and Securus Technologies Corporation's [sic], and are essentially shielding the same from legal attack and liability." These conclusory allegations are not sufficient to put Appellees on notice of the conduct that allegedly constituted a crime and which crime they are accused of committing. The Court already held that Appellant failed to allege a civil RICO claim. He also failed to allege a criminal violation of the RICO statute, which likewise requires the commission of at least two predicate acts. *See United States v. Nicholson*, 716 F. App'x 400, 407 (6th Cir. 2017), cert. denied, 138 S.Ct. 1337, 200 L.Ed.2d 522 (2018), and cert. denied sub nom. *Johnson v. United States*, 138 S.Ct. 1582, 200 L.Ed.2d 768 (2018).

{¶33} As Appellant failed to allege elements essential to state a claim, the trial court properly dismissed his claim under R.C. 2307.60.

E. Claim for Declaratory Judgment

{¶34} Appellant's final claim is for a declaratory judgment under R.C. 2721.02. The statute provides that "courts of record may declare rights, status, and other legal relations whether or not further relief is or could be claimed." R.C. 2721.02. Nowhere in the Complaint, however, does Appellant indicate what rights, status, or other legal relations he seeks a declaration of.

{¶35} As the trial court noted, the determination of Appellant's legal rights related to the purchase of his electronic tablet is currently pending in the Miami-Dade County Circuit District Court in Florida. The Ross County Common Pleas Court therefore does not have jurisdiction over claims seeking a determination of those rights. *See State ex rel. Racing Guild of Ohio v. Morgan*, 17 Ohio St.3d 54, 56, 476 N.E.2d 1060 (1985) (" 'As between [state] courts of concurrent jurisdiction, the tribunal whose power is first invoked by the institution of proper proceedings acquires jurisdiction, to the exclusion of all other tribunals, to adjudicate upon the whole issue and to settle the rights of the parties.' "); quoting *State ex rel. Phillips v. Polcar*, 50 Ohio St.2d 279, 364 N.E.2d 33 (1977), syllabus.

{¶36} At a minimum, to comply with the notice pleading of Civ.R. 8, a plaintiff must identify the legal right that he seeks a declaration of under R.C. 2721.02. Accordingly, the trial court properly dismissed this claim in Appellant's Complaint.

F. Jurisdiction over the Judicial Appellees

{¶37} The trial court dismissed all of the claims against the Judicial Appellees on the additional ground that it lacked personal and subject-matter jurisdiction over them. Appellant did not argue in support of his assignments of error that the trial court erred in this regard. As a result, the lack of personal and subject-matter jurisdiction provides an independent basis to affirm the trial court's dismissal of the Complaint as to the Judicial Appellees.

G. Civ.R. 11 and Alleged Vexatious Conduct

{¶38} As mentioned, Appellant contends in his third assignment of error that Appellees engaged in sanctionable conduct under Civ.R. 11 and vexatiously multiplied the proceedings by filing their motions to dismiss. There is no merit to this contention. Civ.R. 11 permits the imposition of sanctions on a party who willfully files a document without good grounds to support it or for purposes of delaying the proceedings. Appellees filed meritorious motions that disposed of unsupported claims at the earliest

possible stage of the case. This portion of the third assignment of error is also overruled.

{¶39} Having found no merit in the arguments raised in this appeal, the decision of the trial court is affirmed.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED. Costs are assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Ross County Common Pleas Court to carry this judgment into execution.

Any stay previously granted by this Court is hereby terminated as of the date of this entry.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Smith, P.J. & Hess, J.: Concur in Judgment and Opinion.

For the Court,

BY: _____
Matthew W. McFarland, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.