**[Cite as *Newton v. Cleveland*, 2016-Ohio-114.]**

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION
**No. 103110**

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## AUTHOR CHARLES D. NEWTON

PLAINTIFF-APPELLANT

vs.

## CITY OF CLEVELAND, ET AL.

DEFENDANTS-APPELLEES

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**JUDGMENT:**
AFFIRMED

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Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-14-838210

**BEFORE:** S. Gallagher, J., Celebrezze, P.J., and Kilbane, J.

**RELEASED AND JOURNALIZED:** January 14, 2016

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SEAN C. GALLAGHER, J.:

**{¶1}** This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. Charles D. Newton appeals from the trial court's order granting summary judgment in favor of the city of Cleveland, the public safety director, the county prosecutor, the Cleveland police department sex crimes unit director and a detective, the former county prosecutor, and the Cuyahoga County medical examiner and administrator (collectively "defendants"). We must affirm.

**{¶2}** The crux of Newton's claims against the defendants is that by not prosecuting Anthony Sowell for crimes committed against Vernice Crutcher in 2006, the defendants degraded the marketability of Newton's book, in which he theorized that Crutcher was an early victim of Sowell. Newton further claims that the defendants prohibited him from inspecting evidence from Sowell's house to determine whether Crutcher was a victim, the denial of which allegedly caused Newton emotional distress and other monetary injuries. These claims are not new.

**{¶3}** In Cuyahoga C.P. No. CV-14-829173, Newton advanced the same claims, all stemming from the infamous murder saga. In the first case, Newton

> set forth a "statement of facts" that consisted of 96 paragraphs that presented the comprehensive details that underlay his "introduction," then set forth 11 "claims for relief." Five of them requested "injunctive" relief from the trial court. Newton wanted: (1) to inspect the jewelry removed from Sowell's residence, (2) the city of Cleveland to amend its charter to provide for independent review of police investigations, (3) another judge to preside in this case, (4) the Sowell jury to hear this case, and (5) "formal

> charges" to be presented against Sowell on behalf of his "victim" Vernice Crutcher._
>
> Newton additionally sought of the trial court to apply a two-year "Discovery Rule" to his "personal injury" claim, and to make the following findings: (1) appellees' actions had defamed his "literary property," (2) appellees violated R.C. 2379.011 by their actions, (3) appellees' actions violated R.C. 2921.322 and thereby had prevented the "truth" of his writings from being "exposed," and (4) "negligently" and "purposefully" withheld evidence and failed to fulfill their "legal duties" in order to "impede and bring harm to Plaintiff's literary property."
>
> Finally, Newton asserted that appellees' actions, and their subsequent success in their careers after committing their "unlawful" actions, had caused him mental anguish and deprived him of all the commercial opportunities his "literary property" should have garnered. Newton demanded "compensatory and punitive damages" against appellees "in the amount above the jurisdictional minimum of this Court."

*Newton v. Cleveland Law Dept.*, 8th Dist. Cuyahoga No. 102042, 2015-Ohio-1460, ¶ 5-7 ("*Newton I*").

**{¶4}** In that action, the trial court dismissed all claims with prejudice for failure to state a claim upon which relief could be granted. *Id.* In the motion to dismiss, the defendants claimed immunity from tort action pursuant to R.C. Chapter 2744, the individual employees claimed that Newton failed to allege willful or wanton misconduct or acts outside the scope of their employment pursuant to R.C. 2744.03(A)(6), and the defendants jointly claimed that the statute of limitations for the tort claims had expired. *Id.* at ¶ 14, 17, 20. Newton filed an amended complaint within ten days of the motion to dismiss being filed pursuant to Civ.R. 15(A). The amended complaint did not address the statute of limitations issue. The trial court dismissed the action with prejudice. Newton appealed that decision to a panel of this court, claiming, in part, that the trial

court erred by not considering the amended complaint filed ten days after the political subdivision filed its motion to dismiss and that the discovery rule applied to toll the statute of limitations.

**{¶5}** In *Newton I*, it was held that Newton failed to seek leave for the amended complaint, and therefore, his amended complaint could not be considered. *Id.* at ¶ 23. In resolving the merits of the appeal, that panel held that the amended complaint "neither constituted a proper pleading nor alleged anything of substance" and Newton's tort claims, unchanged in the proposed amended complaint, were otherwise barred by the applicable statute of limitations. *Id.* at ¶ 20, 23.

**{¶6}** In the current action, Newton advanced the same tort claims that were addressed in *Newton I*. Newton claimed that (1) the defendants made false, misleading, malicious, or reckless statements damaging his literary property; (2) that a two-year discovery period applied to toll the statute of limitations; and (3) that the defendants' action caused him emotional distress. Another motion to dismiss the complaint was filed, this time based on the doctrine of res judicata. The trial court converted the motion to dismiss to one for summary judgment pursuant to Civ.R. 12(B) because it considered matters outside of the complaint. The trial court granted summary judgment against Newton based on the fact that final judgment was rendered in the previous action between the same parties. Newton timely appealed. We find no merit to the arguments advanced.[1]

[1]Newton also claims that the trial court was directed by the *Newton I* panel to transfer the

**{¶7}** Appellate review of summary judgment is de novo, governed by the standard set forth in Civ.R. 56. *Comer v. Risko*, 106 Ohio St.3d 185, 2005-Ohio-4559, 833 N.E.2d 712, ¶ 8.

> Summary judgment may be granted only when (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party.

*Marusa v. Erie Ins. Co.*, 136 Ohio St.3d 118, 2013-Ohio-1957, 991 N.E.2d 232, ¶ 7.

**{¶8}** Upon our de novo review, we find the trial court did not err. The doctrine of res judicata prohibited the second action filed by Newton. "'A final judgment or decree rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim or cause of action between the parties or those in privity with them.'" *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 381, 653 N.E.2d 226 (1995), quoting *Norwood v. McDonald*, 142 Ohio St. 299, 52 N.E.2d 67 (1943), paragraph one of the syllabus.

**{¶9}** Newton unsuccessfully advanced the same claims in the prior action for which the defendants were granted a final judgment upon the merits for several reasons, the most important of which was that the statute of limitations precluded the tort claims being advanced. *Newton I* at ¶ 20. Thus, Newton's tort claims in the current action

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case to the regular docket. No such order exists in the current record. Evidently, although outside our record, Newton filed the appeal in *Newton I* to be docketed on the accelerated calendar and the administrative judge of this court directed the appeal to be docketed on the regular calendar. Any allegations of error with the procedure in *Newton I* are not subject to review in the current appeal.

were already litigated and resolved in an action between the same parties. The trial court properly concluded that the allegations were barred by the doctrine of res judicata. We affirm the decision of the trial court.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

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

SEAN C. GALLAGHER, JUDGE

FRANK D. CELEBREZZE, JR., P.J., and
MARY EILEEN KILBANE, J., CONCUR