[Cite as *Fechko Excavating, Inc. v. Ohio Valley & S. States LECET*, 2009-Ohio-5155.]

STATE OF OHIO))ss: COUNTY OF MEDINA)	IN THE COURT OF APPEALS NINTH JUDICIAL DISTRICT
FECHKO EXCAVATING, INC. Appellant v. OHIO VALLEY AND SOUTHERN STATES LECET, et al. Appellees	C.A. No. 09CA0006-M APPEAL FROM JUDGMENT ENTERED IN THE COURT OF COMMON PLEAS COUNTY OF MEDINA, OHIO CASE No. 08 CIV 1203

DECISION AND JOURNAL ENTRY

Dated: September 30, 2009

BELFANCE, Judge.

{¶1} Plaintiff-Appellant Fechko Excavating, Inc. ("Fechko") appeals from the judgment of the Medina County Court of Common Pleas dismissing its complaint. For reasons set forth below, we affirm.

PROCEDURAL HISTORY

{¶2} Fechko is a non-union excavating contractor. The Defendants-Appellees are, in some way or another, affiliated with union activities.

{¶3} On June 25, 2008, Fechko filed a nine-count complaint against Ohio Valley and Southern States LECET (Laborer-Employer Cooperative Education Trust) ("Ohio Valley"), Laborers' District Counsel of Ohio ("District Counsel"), Laborers International Union of North America Local 894 ("Local 894"), Laborers International Union of North America Local 860 ("Local 860"), and Daniel L. Ketterman. Subsequently, District Counsel, Local 894, and Local 860 filed a joint motion to dismiss/transfer and Ohio Valley filed a separate motion to dismiss,

joining the other Defendants in their motion and additionally arguing that the trial court lacked personal jurisdiction over it.

{¶4} Before the motion was ruled on, Fechko filed an amended complaint adding Laborers District Council 8 Regional Organizing Committee ("Committee") as a Defendant. The amended complaint contained the same nine causes of action: (1) tortious interference with a contract; (2) tortious interference with business relations; (3) tortious interference with prospective business expectancy; (4) slander *per se*; (5) slander per quod; (6) libel *per se*; (7) libel per quod; (8) false light; and (9) civil conspiracy. District Counsel, Local 894, Local 860, and Committee filed a joint motion to dismiss arguing that the National Labor Relations Act ("NLRA") preempted applicable state law and that the National Labor Relations Board ("NLRB") therefore had exclusive jurisdiction over the claims. The trial court granted the motion to dismiss as to all Defendants, even those who had not filed a motion to dismiss, concluding that the claims were preempted and that the NLRB had jurisdiction over the matter.

{¶5} Fechko has appealed, raising a single assignment of error. Fechko argues that "[t]he trial court erred in holding that Defendants[']/Appellees' defamatory, tortious, and unlawful conduct is protected under the [NLRA]." Ohio Valley has filed a cross-assignment of error arguing the trial court erred by not granting it a dismissal based upon lack of personal jurisdiction.

STANDARD OF REVIEW

{¶6} We review a trial court's decision to grant a motion to dismiss under a *de novo* standard. *Watson v. Akron*, 9th Dist. No. 24077, 2008-Ohio-4995, at ¶11. The trial court should grant a Civ.R. 12(B)(6) motion only if, after reviewing only the complaint, accepting the factual allegations as true, and making all reasonable inferences in favor of the nonmoving party, the

trial court concludes that the nonmoving party can prove no set of facts that would entitle that party to relief. Id., quoting *Stevenson v. ABM Inc.*, 9th Dist. No. 07CA0009-M, 2008-Ohio-3214, at ¶6.

OVERVIEW OF THE FACTS

{¶7} As our analysis will require us to closely examine the alleged conduct of the Defendants, we believe it important to outline the factual allegations made by Fechko in its amended complaint. From the complaint it appears that the Defendants engaged in various activities in attempts to promote unions, while at the same time expressing their opinions of non-union employers.

{¶8} Fechko essentially argues that the Defendants as a whole engaged in unlawful conduct concerning three projects Fechko either was involved in, or wanted to be involved in: a Cuyahoga Falls project, a Medina County project, and a prospective Lake County project. Fechko also made numerous allegations concerning Ketterman's conduct.

{¶9} With respect to the Cuyahoga Falls project, Fechko specifically argues that the Defendants falsely reported Fechko to the Environmental Protection Agency ("EPA") and the Occupational Safety and Health Administration ("OSHA") for alleged violations, "spoke poorly" about Fechko at a city council meeting and to Cuyahoga Falls residents, and entered Fechko's construction zone in a manner to harass and interfere with Fechko's work. With respect to the Medina County project, Fechko alleges that the Defendants filed a "baseless prevailing wage complaint against Fechko," tampered with Fechko's equipment, picketed Fechko's offices, and trespassed. As to the Lake County project, Fechko claims that the Defendants "spoke negatively about Fechko and conveyed false information about Fechko" to Lake County officials and project managers who were considering Fechko's bid on a project in Lake County.

{¶10} As to Ketterman, Fechko alleged that Ketterman prepared a "packet of information" entitled "Case Study of Fechko" which Ketterman discussed with Fechko's bonding agent and later sent to Medina County. Ketterman sent a fax to the bonding agent stating that Ketterman is "monitoring how [Fechko's] poor workmanship and 'cut-throat prices' are affecting the area standards for underground utilities." In his conversation with the bonding agent, Ketterman allegedly stated that Fechko is "a bad contractor and is bringing down the entire construction industry in 'area standards[,]'"and that "Fechko cheated on stone bedding specifications and compaction standards[.]" Fechko further alleges that Ketterman "made numerous accusations against Fechko concerning safety and alleged reckless behavior[]" and made harassing phone calls to the home of Fechko's owner.

PREEMPTION AND THE NLRA

{¶11} Initially we note that the NLRA contains no express preemption provision. *J.A. Croson Co. v. J.A. Guy, Inc.* (1998), 81 Ohio St.3d 346, 350. "Where the pre-emptive effect of federal enactments is not explicit, courts sustain a local regulation unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States." (Internal quotations omitted.) *Metro. Life Ins. Co. v. Massachusetts* (1985), 471 U.S. 724, 747-748, quoting *Allis-Chalmers Corp. v. Lueck* (1985), 471 U.S. 202, 209 quoting *Malone v. White Motor Corp.* (1978), 435 U.S. 497, 504. Preemption seeks to prevent the potential conflict which "arises when two law-enforcing authorities, with the disharmonies inherent in two systems, one federal the other state, are required to apply inconsistent standards of substantive law and/or differing remedial schemes." *J.A. Croson Co.*, 81 Ohio St.3d at 350-351.

{¶12} The seminal case in this area is *San Diego Bldg. Trades Council v. Garmon* (1959), 359 U.S. 236. In *Garmon*, the Supreme Court of the United States granted certiorari "to determine whether the California court had jurisdiction to award damages arising out of peaceful union activity which it could not enjoin." Id. at 239. The Supreme Court of the United States held that "[w]hen it is clear or may fairly be assumed that the activities which a State purports to regulate are protected by [section] 7 of the National Labor Relations Act [Section 157, Title 29, U.S. Code], or constitute an unfair labor practice under [section] 8 [Section 158, Title 29, U.S. Code], due regard for the federal enactment requires that state jurisdiction must yield." Id. at 244. The Court went on to further state that "[w]hen an activity is arguably subject to s 7 or s 8 of the Act, the States as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted." Id. at 245. Section 7 of the NLRA states that:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158(a)(3) of this title." Section 157, Title 29, U.S. Code.

Section 8 of the NLRA identifies unfair labor practices. Section 158, Title 29, U.S. Code. Applying the facts of the case to the law, the Court concluded that "[i]n the light of these principles the case before us is clear. Since the National Labor Relations Board has not adjudicated the status of the conduct for which the State of California seeks to give a remedy in damages, and since such activity is arguably within the compass of s 7 or s 8 of the Act, the State's jurisdiction is displaced." *Garmon*, 359 U.S at 246.

{¶13} Preemption, however, will not apply to conduct that would otherwise be subject to preemption if the conduct "'was a merely peripheral concern of the [Act] [or] touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [courts] could not infer that Congress had deprived States of all power to act.'" *J.A. Croson Co.*, 81 Ohio St.3d at 355, quoting *Farmer v. United Bhd. of Carpenters & Joiners of Am., Local 25* (1977), 430 U.S. 290, 296-297, quoting *Garmon*, 359 U.S. at 243-244; for examples of activity touching on local interests, "[s]ee, e.g., *Linn v. Plant Guard Workers*, 383 U.S. 53, 86 S.Ct. 657, 15 L.Ed.2d 582 (1966) (malicious libel); *Automobile Workers v. Russell*, 356 U.S. 634, 78 S.Ct. 932, 2 L.Ed.2d 1030 (1958) (mass picketing and threats of violence); *Machinists v. Gonzales*, 356 U.S. 617, 78 S.Ct. 923, 2 L.Ed.2d 1018 (1958) (wrongful expulsion from union membership)." *Farmer*, 430 U.S. at 297; see, also, *Farmer*, 430 U.S. at 301-305 (intentional infliction of emotional distress). However, "[p]reemption exceptions based on local interests are, in fact, inapplicable where state regulation would restrain or inhibit activity that is actually protected by Section 7 of the NLRA. This distinction is necessary due to the differing rationales that underlie preemption based on actual federal protection of the conduct at issue and that which is based on the primary jurisdiction of the NLRB." *J.A. Croson Co.*, 81 Ohio St.3d at 356.

{¶14} In their motion to dismiss, District Counsel, Local 894, Local 860, and Committee argued that all of Fechko's claims were preempted by the NLRA. Thus, we will review the alleged conduct to determine whether it is protected or prohibited by the act and therefore preempted; and also examine whether any exceptions to the preemption doctrine apply, allowing the trial court to retain jurisdiction. We note that Fechko's complaint has not made this task an

easy one; while Fechko's complaint contains numerous factual allegations, these allegations are not correlated with Fechko's causes of action.

Tortious Interference Claims

{¶15} Fechko's first three claims all deal with tortious interference. These claims only allege that the Defendants as a whole acted unlawfully and make no mention of Ketterman's specific conduct. As such, we will not address Ketterman's conduct in evaluating whether these claims are preempted.

{¶16} A careful review of the complaint reveals that the vast majority of the conduct connected, or arguably connected, to Fechko's tortious interference claims is either clearly or arguably protected or prohibited by sections 7 and 8 of the NLRA. Fechko alleges that the Defendants falsely reported Fechko to the EPA and OSHA for alleged violations, "spoke poorly" about Fechko at a city council meeting and to Cuyahoga Falls residents, entered Fechko's construction zone in a manner to harass and interfere with Fechko's work, filed a "baseless prevailing wage complaint against Fechko," tampered with Fechko's equipment, picketed Fechko's offices, trespassed, and "spoke negatively about Fechko and conveyed false information about Fechko" to Lake County officials and project managers who were considering Fechko's bid on a project in Lake County.

{¶17} Picketing, depending on the circumstances, is both arguably protected under section 7 and arguably prohibited under section 8. See *Sears, Roebuck & Co. v. San Diego Cty. Dist. Council of Carpenters* (1978), 436 U.S. 180, 185-187. OSHA and prevailing wage claims

filed by employees[1] are protected as concerted activity under section 7 of the Act. See *Westchester Iron Works Corp. & Cabrera* (2001), 333 N.L.R.B. 859, 865 ("The presentation of a wage grievance or a demand for higher wages constitutes protected, concerted activity."); *Jim Causley Pontiac & Wittbrodt* (1977), 232 N.L.R.B. 125, 131; *B&P Motor Express, Inc. & James* (1977), 230 N.L.R.B. 653, 655 ("Making safety related complaints, particularly when such matters are embodied in a collective-bargaining agreement, as herein, is protected, concerted activity."). As to the Defendants speaking "poorly" or "negatively" or "falsely" about Fechko it would seem such vague accusations could not possibly rise to the level of defamation, nor does Fechko include such remarks under its four defamation claims. Even if the statements were defamatory, the Supreme Court of the United States has stated that "in a number of cases, the Board has concluded that epithets such as 'scab,' 'unfair,' and 'liar' are commonplace in these [labor] struggles and not so indefensible as to remove them from the protection of s 7, even though the statements are erroneous and defame one of the parties to the dispute." *Linn v. United Plant Guard Workers of Am., Local 114* (1966), 383 U.S. 53, 60-61. Thus in sum, the conduct which underlies Fechko's tortious interference claims is largely clearly or arguably protected or prohibited by the Act. As such, we are required to cede jurisdiction to the Board, unless the matter "'touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, [courts] could not infer that Congress had

[1] Under the statute, "[t]he term 'employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless this subchapter explicitly states otherwise * * *." Section 152(3), Title 29, U.S. Code. It is unclear whether the Board would determine that the Defendants constituted employees under the statute, as the Board's case law only addresses claims filed by employees of the union or non-union employer, and not by outside individuals.

deprived States of all power to act.'" *J.A. Croson Co.*, 81 Ohio St.3d at 355, quoting *Farmer*, 430 U.S. at 296-297, quoting *Garmon*, 359 U.S. at 243-244.

{¶18} We do not believe that Fechko's tortious interference claims are such a matter. Nor has Fechko pointed us to any cases of the Supreme Court of the United States or the Supreme Court of Ohio holding differently. Further, we agree with the reasoning of the Northern District of Ohio when it cited the Sixth Circuit and stated: "Claims of tortious interference with business relations do not fall within the *Garmon* exception for regulated conduct which is 'deeply rooted in local feeling and responsibility.' Further, the facts pertaining to a tortious interference claim generally are closely related to the labor dispute involved in the case." *A&D Supermarkets, Inc., #2 v. United Food & Commercial Workers, Local Union 880* (N.D. Ohio 1989), 732 F.Supp. 770, 779, citing *Falls Stamping & Welding Co. v. International Union, United Automobile Workers, etc.* (C.A.6, 1984), 744 F.2d 521, 524-25. Moreover, Fechko in its brief in this Court cited to several cases for the proposition that "courts have been receptive to claims for intentional interference with contractual relationships or business relationships *accomplished by intimidation, violence, and strike-related threats*." (Emphasis added.) However, even taking the facts of the complaint as true and making all reasonable inferences in favor of Fechko, we cannot see how the activities complained of involved violence, intimidation, or threats. Thus, the trial court did not err in dismissing Fechko's tortious interference claims.

Defamation

{¶19} The Supreme Court of the United States has provided the framework for our analysis, which requires us to balance the competing interest of federally protected free speech with the protections offered by state defamation laws. See *Old Dominion Branch No. 496, Natl.*

Assn. of Letter Carriers v. Austin (1974), 418 U.S. 264, 270-272, citing *Linn*, 383 U.S. 53. In *Linn*, "[the Court] therefore limit[ed] the availability of state remedies for libel to those instances in which the complainant can show that the defamatory statements were circulated with malice and caused him damage[,]" and adopted the standard set forth in *New York Times Co. v. Sullivan* (1964), 376 U.S. 254. *Linn*, 383 U.S. at 64-65. The Court reaffirmed this in *Austin* and stated that under *Linn* "libel actions under state law were pre-empted by the federal labor laws to the extent that the State sought to make actionable defamatory statements in labor disputes which were published without knowledge of their falsity or reckless disregard for the truth." *Austin*, 418 U.S. at 273. In doing so, the Court noted that "the Board has concluded that statements of fact or opinion relevant to a union organizing campaign are protected by s 7, even if they are defamatory and prove to be erroneous, unless made with knowledge of their falsity." Id. at 277-278. "'Likewise, in a number of cases, the Board has concluded that epithets such as 'scab,' 'unfair,' and 'liar' are commonplace in these struggles and not so indefensible as to remove them from the protection of s 7, even though the statements are erroneous and defame one of the parties to the dispute.'" Id. at 278, quoting *Linn*, 383 U.S. at 60-61. Further, the Court in *Austin* examined the breadth of the *New York Times* standard itself, and recognized that it had previously held in a non-labor context that "the use of the word 'black mail' could not be the basis of a libel judgment under the *New York Times* standard." *Austin*, 418 U.S. at 284-285, citing *Greenbelt Cooperative Publishing Assn. v. Bresler* (1970), 398 U.S. 6, 13. The *Austin* Court quoted from *Bresler* and reiterated that "even the most careless reader must have perceived that the word ['blackmail'] was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's negotiating position extremely unreasonable." Id. at 285. Thus, it is clear that the union's federal free speech protections under section 7 are broad.

{¶20} Therefore, pursuant to *Linn* and *Austin*, we initially examine whether the alleged activities of the Defendants occurred within a labor dispute. Under the NLRA, "[t]he term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee." Section 152(9), Title 29, U.S. Code. "The definition of labor dispute under the NLRA is very broad and rarely have courts found concerted union activities to fall outside this broad definition. Where the union acts for some arguably job-related reason and not out of pure social or political concerns, a 'labor dispute' exists." (Internal citations and quotations omitted.) *Beverly Hills Foodland, Inc. v. United Food & Commercial Workers Union, Local 655* (C.A.8, 1994), 39 F.3d 191, 195 ("We are persuaded the Union campaign publicizing Foodland's non-union status, wages and benefits paid to employees and alleged racial disparities in its work-force involved 'terms' and 'conditions' of employment. As such, a labor dispute existed * * *.").

{¶21} Thus, broadly interpreting the definition of labor dispute, we can only conclude that the Defendants' actions took place within a labor dispute. The record indicates that the Defendants were attempting to point out to the public and members of local government that Fechko was non-union and the disparities the Defendants believed that caused. That is not to say that the Defendants conduct was appropriate; it only allows us to determine that the conduct occurred within a labor dispute.

{¶22} Thus, if the statements were indeed defamatory, Fechko must have pled that the statements were made with malice and caused it damage. Fechko's four defamation claims,

slander and libel *per se* and slander and libel per quod allege both, albeit without identifying how Fechko was actually injured.

{¶23} Under Ohio law, for a plaintiff to prevail on a defamation claim, "the evidence must establish (1) a false and defamatory statement concerning [a plaintiff], (2) publication of the statement, (3) fault, and (4) harm. Where [plaintiff's] complaint alleges defamation per se, damages are presumed. In order to establish a claim of defamation per se, [plaintiff] must show that the words used in [defendant's] statements fell into one of three categories, the relevant category being having the tendency to injure the plaintiff in his trade or occupation." (Internal citations and quotations omitted.) *Earl v. Nelson*, 9th Dist. No. 04CA008622, 2006-Ohio-3341, at ¶24. Thus, despite the fact that Fechko alleges the existence of malice and damages in its defamation *per se* claims, elements required under *Linn*, Ohio law does not require Fechko to prove damages prior to prevailing on such a claim. *Earl* at ¶24. As Ohio's defamation *per se* causes of action do not require plaintiffs to prove actual damage, these claims are preempted.

{¶24} We therefore now turn to Fechko's defamation per quod claims. These libel and slander claims all revolve around the statements and writings of Ketterman, which Fechko attributes to the Defendants as well, and thus, only those facts are relevant for our analysis. With respect to Ketterman, Fechko alleged that that Ketterman prepared a "packet of information" entitled "Case Study of Fechko" which Ketterman discussed with Fechko's bonding agent and later sent to Medina County. Ketterman sent a fax to the bonding agent stating that Ketterman is "monitoring how [Fechko's] poor workmanship and 'cut-throat prices' are affecting the area standards for underground utilities." In his conversation with the bonding agent, Ketterman allegedly stated that Fechko is "a bad contractor and is bringing down the entire construction industry in 'area standards[,]'"and that "Fechko cheated on stone bedding specifications and

compaction standards[.]" Fechko further alleges that Ketterman "made numerous accusations against Fechko concerning safety and alleged reckless behavior[]" and made harassing phone calls to the home of Fechko's owner.

{¶25} Given that the facts of this case take place in the context of a labor dispute, we conclude that the speech complained of amounts to opinion speech protected by federal labor law. The Supreme Court of Ohio has held that opinion speech is protected and not actionable as defamation. See *Vail v. The Plain Dealer Publishing Co.* (1995), 72 Ohio St.3d 279, 281. ("The Ohio Constitution provides a separate and independent guarantee of protection for opinion ancillary to freedom of the press."). "[W]hen determining whether a statement is fact or opinion * * * the court should consider: the specific language used, whether the statement is verifiable, the general context of the statement, and finally, the broader context in which the statement appeared." Id. at 282.

{¶26} Labor disputes are often heated, as the Supreme Court acknowledged in *Linn*, 383 U.S. 53, 58. ("Labor disputes are ordinarily heated affairs; the language that is commonplace there might well be deemed actionable per se in some state jurisdictions. Indeed, representation campaigns are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Both labor and management often speak bluntly and recklessly, embellishing their respective positions with imprecatory language."). Specifically, the statements were made to Fechko's bonding agent and to Medina County.

{¶27} Concerning the specific language used, "[w]e must determine whether a reasonable reader would view the words used to be language that normally conveys information of a factual nature or hype and opinion; whether the language has a readily ascertainable

meaning or is ambiguous." *Vail*, 72 Ohio St.3d at 282. We believe the language is not generally of a factual nature. Statements such as "poor workmanship," "bad contractor," "bringing down area standards," "cut-throat prices," and "recklessness" are easily construed to be statements of opinion and not of fact. We conclude that a reasonable person would not take the language listed in the amended complaint as being anything but one individual's opinion. Moreover, the majority of the statements are generally unverifiable. "Where the * * * statement lacks a plausible method of verification, a reasonable reader will not believe that the statement has specific factual content." (Internal quotations omitted.) Id. at 283, quoting *Scott v. News-Herald* (1986), 25 Ohio St.3d 243, 251-252, citing *Ollman v. Evans* (C.A.D.C.1984), 750 F.2d 970, 979. Further, to the extent that any of the statements might be verifiable, we are constrained by the Board's generous interpretation of the protections afforded by section 7 of the Act. As noted above, "the Board has concluded that epithets such as 'scab,' 'unfair,' and 'liar' are commonplace in these struggles and not so indefensible as to remove them from the protection of s 7, *even though the statements are erroneous and defame one of the parties to the dispute*." (Emphasis added.) *Austin*, 418 U.S. at 278, quoting *Linn*, 383 U.S. at 60-61.

{¶28} In *Austin*, the Court examined a prior case concerning picketing and noted that the words "unfair" and "fascist" could not be construed as false statements of fact. Id. at 284. The Court stated that "[s]uch words were obviously used here in a loose, figurative sense to demonstrate the union's strong disagreement with the views of those workers who oppose unionization. Expression of such an opinion, even in the most pejorative terms, is protected under federal labor law." Id. Likewise, we conclude that the statements by the union organizations and members here were made in a "loose, figurative sense" and were made with the purpose of expressing disagreement with the policies and practices of non-union

organizations. Id. We conclude that Fechko's claims for defamation were therefore properly dismissed.

False Light & Civil Conspiracy

{¶29} We note that Fechko has not made any specific arguments addressing why it was error for the trial court to dismiss these two claims, despite carefully addressing the same with respect to its other claims. "It is the duty of the appellant, not this court, to demonstrate his assigned error through an argument that is supported by citations to legal authority and facts in the record." *State v. Taylor* (Feb. 9, 1999), 9th Dist. No. 2783-M, at *3. See, also, App.R. 16(A)(7). As Fechko has failed to specifically argue that the trial court erred in dismissing its false light and civil conspiracy claims and pointed us to no law on either topic, Fechko has failed to demonstrate that the trial court erred. *Taylor* at *3.

OHIO VALLEY'S CROSS-ASSIGNMENT OF ERROR

{¶30} In Ohio Valley's cross-assignment of error, it argues that the trial court erred in failing to grant its motion to dismiss for lack of personal jurisdiction. However, as we have affirmed the trial court's dismissal of the complaint as to all Defendants, Ohio Valley's cross-appeal is moot.

CONCLUSION

{¶31} In light of the foregoing, we affirm the judgment of the Medina County Court of Common Pleas.

Judgment affirmed.

There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Medina, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(E). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

EVE V. BELFANCE
FOR THE COURT

MOORE, P. J.
WHITMORE, J.
CONCUR

APPEARANCES:

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