[Cite as *Jacobson v. Kaforey*, 2015-Ohio-2624.]

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<tr><td>STATE OF OHIO

COUNTY OF SUMMIT</td><td>)
)ss:
)</td><td>IN THE COURT OF APPEALS
NINTH JUDICIAL DISTRICT</td></tr>
<tr><td>JESSICA JACOBSON

Appellant

v.

ELLEN KAFOREY, et al.

Appellees</td><td></td><td>C.A. No. 26915

APPEAL FROM JUDGMENT
ENTERED IN THE
COURT OF COMMON PLEAS
COUNTY OF SUMMIT, OHIO
CASE No. CV 2012 09 5246</td></tr>
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DECISION AND JOURNAL ENTRY

Dated: June 30, 2015

CANNON, Judge.

{¶1} Appellant Gary Kirsch, as the guardian of Plaintiff Jessica Jacobson, appeals the entry of the Summit County Court of Common Pleas dismissing Ms. Jacobson's complaint. For the reasons set forth below, we affirm in part and reverse in part.

I.

{¶2} In September 2012, Ms. Jacobson, pro se, filed a four-count complaint naming Akron Children's Hospital, Cleveland Clinic Children's Hospital for Rehabilitation ("Cleveland Clinic"), and Ellen Kaforey (collectively "Defendants"), as Defendants. Count one alleged the Defendants interfered with a parental or guardianship interest in violation of R.C. 2307.50 and counts two through four were filed pursuant to R.C. 2307.60, seeking civil damages for criminal acts. A visiting judge was ultimately assigned to the case.

{¶3} The allegations in the complaint involve the period of time from April 18, 2001, through July 6, 2001, when Ms. Jacobson was still a minor (date of birth: December 3, 1993).

Ms. Jacobson alleged that Ms. Kaforey misrepresented herself as Ms. Jacobson's guardian and kept Ms. Jacobson from having contact with her mother while Ms. Jacobson was under the care of Akron Children's Hospital and the Cleveland Clinic. Additionally, she maintained that Akron Children's Hospital and the Cleveland Clinic knew or should have known that Ms. Kaforey did not have the right to interfere with Ms. Jacobson's relationship with her mother and that the institutions kept Ms. Jacobson from her mother.

{¶4} The Defendants each separately filed a motion to dismiss pursuant to Civ.R. 12(B)(6), arguing that Ms. Jacobson lacked standing to file a claim pursuant to R.C. 2307.50 and that the remainder of the claims were subject to dismissal because R.C. 2307.60 does not authorize a civil action for damages resulting from the violation of criminal statutes.

{¶5} Amidst the briefing on the motions to dismiss, Ms. Jacobson filed a motion seeking leave to brief the court on constitutional issues, which was denied by a judge other than the visiting judge. Ms. Jacobson filed a motion to vacate the denial asserting the signing judge had a conflict of interest and the entry was void. Additionally, Mr. Kirsch filed several documents, including a motion to intervene or to be substituted as Ms. Jacobson's next friend, and a motion seeking a hearing to consider the imposition of Civ.R. 11 sanctions against Ms. Kaforey's counsel.

{¶6} Thereafter, the trial court issued an entry granting the motions to dismiss. The trial court concluded that Ms. Jacobson could not state a claim under R.C. 2307.50 as she was not a parent, guardian, or legal custodian. Additionally, while citing R.C. 2307.50 instead of R.C. 2307.60, the trial court concluded that the statute did not provide a basis for civil damages for the alleged violations of criminal statutes. The trial court implicitly denied Ms. Jacobson's

motion to vacate the entry denying her leave to brief constitutional issues as moot. It expressly denied Mr. Kirsch's motion for sanctions as moot.

{¶7} Ms. Jacobson appealed pro se, raising nine assignments of error for our review. After Ms. Jacobson filed her brief, Mr. Kirsch filed a motion to substitute himself for Ms. Jacobson as her guardian, which this Court granted. Prior to oral argument, counsel filed a notice of appearance to represent Ms. Jacobson's interests. Some of the assignments of error have been consolidated and some will be discussed out of sequence to facilitate our review.

II.

ASSIGNMENT OF ERROR IX

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, THE COURT ERRED WHEN IT GAVE ZERO CONSIDERATION AND WEIGHT TO ARGUMENT AND SUPPORT SET FORTH IN PLAINTIFF'S BRIEFS, AND SHOWED BLIND FAITH IN DEFENSE ARGUMENT, DEMONSTRATING A BIASED UNWILLINGNESS TO EVEN ATTEMPT TO CONSTRUE THE COMPLAINT LIBERALLY AND TO RESOLVE DOUBTS IN FAVOR OF GIVING, RATHER THAN DENYING, PLAINTIFF AN OPPORTUNITY TO LITIGATE.

{¶8} Mr. Kirsch asserts in his ninth assignment of error that the trial court erred in its dismissal entry because it did not give any consideration to Ms. Jacobson's arguments. We do not agree.

{¶9} It appears that Mr. Kirsch believes that the trial court had to discuss Ms. Jacobson's arguments and provide reasons for not agreeing with them. Mr. Kirsch has not pointed to any authority that would support this proposition. *See* App.R. 16(A)(7). Further, nothing in the trial court's entry evidences that it failed to consider Ms. Jacobson's arguments. The trial court issued a four-page entry which discussed the history of the case as well as why it found that Ms. Jacobson's claims failed as a matter of law. Whether that determination was

legally correct is not at issue in this assignment of error. In light of Mr. Kirsch's limited argument, his ninth assignment of error is overruled.

ASSIGNMENT OF ERROR I

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, THE TRIAL COURT IMPROPERLY DISMISSED MS. JACOBSON'S CLAIMS (2), (3), AND (4) PER CIV.R. 12(B)(6) WHEN THE COURT DISMISSED THOSE CLAIMS AS RC §2307.50 CLAIMS RATHER THAN RC §2307.60 CLAIMS AS PLED.

ASSIGNMENT OF ERROR II

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, IT WAS ERROR FOR THE COURT TO AMBUSH MS. JACOBSON WITH A JUDGMENT AND FINAL ORDER THAT SYNTHESIZED NEW ARGUMENT NEVER ARGUED BY DEFENSE AND NEVER PRESENTED TO MS. JACOBSON FOR A MEANINGFUL OPPORTUNITY TO OPPOSE.

ASSIGNMENT OF ERROR III

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, THE COURT ERRED IN RELYING ON FALSE AUTHORITY INCORRECTLY STATED TO BE DECISIONS RENDERED BY THE OHIO NINTH DISTRICT COURT OF APPEALS TO DISMISS THE CASE.

ASSIGNMENT OF ERROR IV

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, EVEN IF THE COURT HAD INTENDED TO DISMISS CLAIMS (2), (3), AND (4) INVOKING THE AUTHORITY OF RC §2307.60, THE TRIAL COURT'S ASSERTIONS THAT CIVIL CLAIMS ARE UNAVAILABLE FOR DAMAGES ARISING FROM OFFENSIVE ACTS THAT ARE ALSO CRIMINAL ACTS IS INCORRECT AND WITHOUT BASIS IN LAW.

ASSIGNMENT OF ERROR V

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, EVEN IF THE COURT HAD INTENDED TO DISMISS CLAIMS (2), (3), AND (4) AS PURSUANT TO RC §2307.60, THE AUTHORITIES GIVEN BY THE COURT IN SUPPORT OF DISMISSING CLAIMS (2), (3), AND (4) ARE FRAUDULENT MIS-CHARACTERIZATIONS OF CASE LAW THAT DO NOT SUPPORT THE JUDGMENT.

{¶10} Mr. Kirsch's first five assignments of error all relate to the trial court's dismissal of Ms. Jacobson's claims brought pursuant to R.C. 2307.60 (i.e. counts two, three, and four) and

as such will be addressed together. Mr. Kirsch asserts that the trial court improperly characterized Ms. Jacobson's claims as being brought pursuant to R.C. 2307.50 instead of R.C. 2307.60 and, thus, the trial court erred in dismissing those claims. Mr. Kirsch maintains that even if the trial court's citation to R.C. 2307.50 was a typographical error, it was still erroneous to dismiss the claims because R.C. 2307.60 authorizes a civil action for the claims in counts two through four.

{¶11} We review a trial court order granting a motion to dismiss pursuant to Civ.R. 12(B)(6) de novo. *Perrysburg Twp. v. Rossford*, 103 Ohio St.3d 79, 2004-Ohio-4362, ¶ 5. "In reviewing whether a motion to dismiss should be granted, we accept as true all factual allegations in the complaint." *Id.* "'To prevail on a Civ.R. 12(B)(6) motion to dismiss, it must appear on the face of the complaint that the plaintiff cannot prove any set of facts that would entitle him to recover.'" *U.S. Bank v. Schubert,* 9th Dist. Lorain No. 13CA010462, 2014-Ohio-3868, ¶ 22, quoting *Raub v. Garwood,* 9th Dist. Summit No. 22210, 2005-Ohio-1279, ¶4.

{¶12} Ms. Jacobson brought her second, third, and fourth claims pursuant to R.C. 2307.60 and therein alleged that the Defendants engaged in three different criminal acts that entitled her to recover damages. R.C. 2307.60(A)(1) states that

> [a]nyone 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.

{¶13} Ms. Jacobson's second claim alleged that the Defendants committed a criminal act by violating R.C. 2905.03, the statute addressing unlawful restraint. Her third claim asserted that Ms. Kaforey and the Cleveland Clinic committed a criminal act by violating R.C. 2905.01(B)(2) and R.C. 2905.01(5) (sic), which address the crime of kidnapping. Finally, Ms.

Jacobson's fourth claim alleged that Ms. Kaforey and the Cleveland Clinic committed a criminal act by violating R.C. 2905.05, the statute prohibiting child enticement.

{¶14} Civ.R. 8(A) provides that a pleading that sets forth a claim for relief shall provide "1) a short and plain statement of the claim showing that the party is entitled to relief, and 2) a demand for judgment for the relief to which the party claims to be entitled." This court has confirmed that notice pleading requires "only a short, plain statement of the claim." (Internal quotations and citation omitted.) *Miller v. Bennett*, 9th Dist. Lorain No. 13CA010336, 2014-Ohio-2460, ¶ 7.

{¶15} In addition to the specific criminal code sections Ms. Jacobson claimed were violated, each count was accompanied by claims of specific conduct. For example, in count two, it is alleged, among other things, that Defendants "without privilege and knowing they were without privilege acted to restrain [Ms. Jacobson] from the liberty of being able to freely see, hold, talk to, or otherwise enjoy the comfort, love, and solace of [her] mother * * *." In count three, it is alleged that the Cleveland Clinic and Ms. Kaforey acted to "cause and induce the removal of [Ms. Jacobson] * * * from her hospital room in Ohio to the state of Florida without mother's permission for the primary or sole purpose of giving Summit County CSB enough time to fabricate false charges against [her] mother * * * even though CSB announced * * * to [Ms.] Kaforey and others that CSB had no just cause to seek any form of custody * * *" and that "* * * [Ms.] Kaforey demanded that CSB fabricate charges to induce Juvenile Court to issue temporary custodial orders regardless of absence of just cause."

{¶16} Finally, in count four, it is alleged that "[Ms.] Kaforey acted, with the complicit aid of [the Cleveland Clinic], without privilege, to coax, entice, lure, induce, order, or otherwise influence or cause [Ms. Jacobson] * * * to enter onto an aircraft destined for Florida without the

express legal permission of [mother], the sole uncontested parent and legal custodian of [Ms. Jacobson]. * * * At the time [Ms.] Kaforey acted to coax, entice, lure, induce, order, or otherwise influence or cause [Ms. Jacobson] to enter the aircraft, [Ms.] Kaforey was not acting within the scope of any lawful duties that would authorize such action."

{¶17} As stated above, for purposes of our review under Civ.R. 12(B)(6), the allegations that the specified crimes were committed, together with the specific allegations contained in those counts must be considered to be true. *See Perrysburg Twp.*, 103 Ohio St.3d 79, 2004-Ohio-4362, at ¶ 5. We determine that, given the citation to specific offenses and the detail alleged with respect to each count in the complaint, the Defendants were put on fair notice of the nature of the claims and are, therefore, capable of preparing a defense to them. The fact that discovery or other information may disprove the allegations later is, at this point, essentially not relevant.

{¶18} The Defendants each asserted that counts two through four failed to state a claim for which relief could be granted because R.C. 2307.60 does not authorize a civil action for pursuing a violation of a criminal statute. The trial court in its entry agreed that a civil action could not be predicated upon a violation of a criminal statute but cited to R.C. 2307.50 instead of R.C. 2307.60.

{¶19} Given the content of the trial court's entry, we will proceed under the assumption that the trial court's reference to R.C. 2307.50 in the paragraph addressing the second through fourth counts of the complaint was only a typographical error. *See Schubert,* 2014-Ohio-3868, at ¶ 10, quoting *State v. Greulich,* 61 Ohio App.3d 22, 24-25 (9th Dist.1988) (noting a nunc pro tunc entry can be used "to supply information which existed but was not recorded, to correct mathematical calculations, and to correct typographical or clerical errors[]").

{¶20} Mr. Kirsch addresses the merits of the trial court's ruling and the Defendants' arguments in his fourth assignment of error. The Defendants contended that R.C. 2307.60 does not create a civil cause of action for damages for a violation of a criminal statute. The trial court agreed with this argument, and there is law that would support that conclusion. *See, e.g., Schmidt v. State Aerial Farm Statistics, Inc.,* 62 Ohio App.2d 48, 49 (6th Dist.1978) (addressing R.C. 2307.60's predecessor, R.C. 1.16); *see also Peterson v. Scott Constr. Co.,* 5 Ohio App.3d 203, 204-205 (6th Dist.1982). In *Peterson,* the Sixth District held that the predecessor to R.C. 2307.60, R.C. 1.16, did not create a cause of action. *See Peterson* at paragraph one of the syllabus.[1] Instead, the court held that R.C. 1.16 provided "that a recognized civil cause of action is not merged in a criminal prosecution which arose from the same act or acts." *Id.* The version of R.C. 1.16 at issue in both *Peterson* and *Schmidt* stated that "[a]ny one injured in person or property by a criminal act may recover full damages in a civil action, unless specifically excepted by law." *See Peterson* at 204; *Schmidt* at 49. The language that appears in the current version of R.C. 2307.60(A)(1) is even more specific. It states that "Anyone injured in person or property by a criminal act *has, and* may recover full damages in, a civil action * * *." (Emphasis added). Appellate courts have continued to rely on *Peterson* and *Schmidt* as authority for the proposition that R.C. 2307.60 does not create a separate cause of action. *See Applegate v. Weadock,* 3d Dist. Auglaize No. 2-95-24, 1995 WL 705214, *3 (Nov. 30, 1995); *Edwards v. Madison Twp.*, 10th Dist. Franklin No. 97APE06-819, 1997 WL 746415, *7 (Nov. 25, 1997);

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[1] Both *Peterson* and *Schmidt* cite to *Story v. Hammond*, 4 Ohio 376, 378 (1831) for the proposition that former R.C. 1.16 was a codification of the common law that a civil action does not merge into a criminal prosecution. *See Peterson* at 204; *Schmidt* at 49. However, *Story* does not actually mention any particular section of the code in its discussion.

Lykins v. Miami Valley Hosp., 2d Dist. Montgomery No. 00-CV-2404, 2001 WL 35673996, *1-*2 (Nov. 20, 2001); *McNichols v. Rennicker,* 5th Dist. Tuscarawas No. 2002 AP 04 0026, 2002-Ohio-7215, ¶ 17. Instead, in order to proceed under R.C. 2307.60, "[a] party must rely on a separate civil cause of action, existent either in the common law or through statute * * *." *Groves v. Groves,* 10th Dist. Franklin No. 09AP-1107, 2010-Ohio-4515, ¶ 25; *McNichols* at ¶ 17.

{¶21} We hold that the current version of R.C. 2307.60 independently authorizes a civil action for damages from violations of criminal acts. That is exactly what the plain language of the statute authorizes. *See* R.C. 2307.60(A)(1) ("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* * * *.") (Emphasis added.). The plain language indicates that a civil action for damages caused by criminal acts is available unless otherwise prohibited by law. *See Wesaw v. Lancaster,* S.D.Ohio No. 22005CV0320, 2005 WL 3448034, *7 (Dec. 15, 2005); *see also Gonzalez v. Spofford*, 8th Dist. Cuyahoga 85231, 2005-Ohio-3415, ¶ 27; *Cartwright v. Batner*, 2d. Dist. Montgomery No. 25938, 2014-Ohio-2995, ¶ 94 ("R.C. 2307.60 is a broad statute referring to '[a]nyone injured in person or property by a criminal act * * *,' whereas R.C. 2307.61 refers more specifically to '[a] property owner * * *.' R.C. 2307.61 also limits its reach to situations involving willful damage of property or theft, and provides additional potential remedies, including liquidated damages and an award of treble damages.").

{¶22} We note that there is at least one statutory provision that does provide such an exception. In what is referred to as the "dram shop" statute, R.C. 4399.18 states: "Notwithstanding division (A) of section 2307.60 of the Revised Code and except as otherwise provided in this section, no person, and no executor or administrator of the person, who suffers

personal injury, death, or property damage as a result of the actions of an intoxicated person has a cause of action against any liquor permit holder or an employee of a liquor permit holder * * *." It seems apparent that if R.C. 2307.60 did not authorize damages in a civil action for injuries sustained as a result of criminal conduct, there would be no need for the prelude to this section that states: "Notwithstanding division (A) of section 2307.60 * * *." *See also Aubin v. Metzger,* 3d Dist. Allen No. 1-03-08, 2003-Ohio-5130, ¶ 14 ("R.C. 2307.60 gives anyone injured by criminal actions a right to fully recover their damages in a civil action. The legislature limited this right with the enactment of R.C. 4399.18 in an attempt to codify the existing common law policy regarding the liability of others for the actions of intoxicated persons."). The Defendants in this matter have pointed to nothing that would indicate similar exceptions exist for acts violating R.C. 2905.03, 2905.01, or 2905.05.

{¶23} There are other statutes that reference civil actions pursuant to R.C. 2307.60. *See, e.g.,* R.C. 2307.61, 2307.62, 2913.49(J). In addition, the legislative history of R.C. 2913.49(J), supports the conclusion that R.C. 2307.60(A) itself does authorize a general civil cause of action for damages from criminal acts. *See* Ohio Legislative Service Commission, *Final Analysis, Am.Sub. H.B. 488*, http://www.lsc.state.oh.us/analyses130/14-hb488-130.pdf (accessed Jan. 2, 2015) (citing to R.C. 2307.60 and noting that "[c]ontinuing law creates a general cause of action for injury to person or property by a criminal act, but does not include a cause of action expressly for identity fraud[]").

{¶24} Further, the language in the current version of R.C. 2307.60 differs from the language of G.C. 12379, which is the predecessor to former R.C. 1.16, the statute which was repealed and reenacted as R.C. 2307.60. Whereas G.C. 12379 provided that, "[n]othing contained in the penal laws shall prevent any one injured in person or property, by a criminal act

from recovering full damages, unless specifically excepted by law[,]" R.C. 2307.60(A)(1) provides that, "[a]nyone injured in person or property by a criminal act has, and may recover full damages in, a civil action unless specifically excepted by law * * *." Assuming that it was the intent of the General Assembly via the enactment of G.C. 12379 to codify the doctrine that a civil cause of action does not merge into a criminal prosecution, it is difficult to say that, given the differences in the language used, such was the intent of the enactment of R.C. 2307.60. Where G.C. 12379 purports to not prohibit civil actions, R.C. 2307.60 expressly authorizes them. *Compare* G.C. 12379 *with* R.C. 2307.60.

{¶25} Given all of the foregoing, including the limited argument made by the Defendants,[2] we cannot say that the Defendants have established that Ms. Jacobson has failed to state a claim pursuant Civ.R. 12(B)(6). Accordingly, the trial court erred in dismissing Ms. Jacobson's second, third, and fourth claims for relief on the basis that she cannot use R.C. 2307.60 to state a cause of action for damages arising from the specifically enumerated criminal acts.

{¶26} We sustain Mr. Kirsch's fourth assignment of error and overrule the first, second, third, and fifth assignments of error as moot.

ASSIGNMENT OF ERROR VII

> IN IT[S] ORDER OF CIV.R. 12(B)(6) DISMISSAL, THE TRIAL COURT MISCONSTRUES THE LANGUAGE OF RC §2307.50 BY LOOKING OUTSIDE THE FOUR CORNERS OF THE STATUTE TO STEERING NARRATIVE THEN ERRED IN DISMISSING CLAIM-(1) FOR LACK OF STANDING.

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[2] Because Defendants have provided no other argument that Ms. Jacobson's claims two, three, and four fail to state a claim upon which relief can be granted, this is the only issue currently before this Court. We take no position on whether Ms. Jacobson's claims fail on some other grounds.

{¶27} Mr. Kirsch asserts in his seventh assignment of error that the trial court erred in concluding that Ms. Jacobson could not state a claim pursuant to R.C. 2307.50. We do not agree.

{¶28} Ms. Jacobson alleged in the first count of her complaint that the Defendants violated R.C. 2307.50 by preventing her mother from visiting or talking to her without privilege to do so.

{¶29} R.C. 2307.50(B) provides that:

> Except as provided in division (D) of this section, if a minor is the victim of a child stealing crime and if, as a result of that crime, the minor's parents, parent who is the residential parent and legal custodian, parent who is not the residential parent and legal custodian, guardian, or other custodian is deprived of a parental or guardianship interest in the minor, the parents, parent who is the residential parent and legal custodian, parent who is not the residential parent and legal custodian, guardian, or other custodian may maintain a civil action against the offender to recover damages for interference with the parental or guardianship interest.

A child stealing crime is defined as "a violation of sections 2905.01, 2905.02, 2905.03, and 2919.23 of the Revised Code or section 2905.04 of the Revised Code as it existed prior to the effective date of this amendment." R.C. 2307.50(A)(1).

{¶30} The trial court concluded that the plain language of the statute does not authorize the victim of the child stealing crime to file a claim pursuant to R.C. 2307.50. We agree.

{¶31} The statute specifically lists the individuals that may file an action pursuant to R.C. 2307.50. These include: "the parents, parent who is the residential parent and legal custodian, parent who is not the residential parent and legal custodian, guardian, or other custodian * * *." Thus, even assuming that the Defendants committed a child stealing crime, Ms. Jacobson is not the proper party to bring an action under R.C. 2307.50. Her complaint does not allege that she is any of the individuals authorized to bring an action pursuant to R.C.

2307.50. Even viewing the allegations in a light most favorable to her, the allegations at best assert that she was the victim of a child stealing crime. Thus, any relief available to Ms. Jacobson would lie outside of R.C. 2307.50.

{¶32} Mr. Kirsch's seventh assignment of error is overruled.

ASSIGNMENT OF ERROR VI

THE COURT ERRED IN NOT HOLDING THE CIV.R. 11 HEARING TO ADDRESS FRAUDULENT CITATION OF AUTHORITY WHEN THOSE SAME AUTHORITIES WERE RELIED ON BY THE COURT AS SUPPORT IN RENDERING ITS DECISION.

ASSIGNMENT OF ERROR VIII

THE COURT ERRED IN NOT VACATING THE ORDER DENYING LEAVE TO BRIEF CONSTITUTIONAL ISSUES SIGNED BY A DISQUALIFIED JUDGE NOT ASSIGNED TO THE CASE, "FOR" A DISQUALIFIED JUDGE WHO RECUSED HERSELF WHEN THE COMPLAINT WAS FILED.

{¶33} Mr. Kirsch asserts in his sixth assignment of error that the trial court erred in failing to hold a hearing on his motion for sanctions. He asserts in his eighth assignment of error that the trial court erred in not vacating the order denying Ms. Jacobson's motion for leave to brief constitutional issues.

{¶34} After dismissing the four counts of Ms. Jacobson's complaint, the trial court concluded that Mr. Kirsch's motion to intervene as the next friend of Ms. Jacobson, Mr. Kirsch's motion for sanctions, and any other pending motions were moot. Given that we have reversed the trial court's dismissal of Ms. Jacobson's second, third, and fourth claims, the foregoing motions would no longer be moot. Accordingly, it would be premature for this Court to address these issues at this time and we decline to review them.

III.

{¶35} In light of the foregoing, we sustain Mr. Kirsch's fourth assignment of error, decline to address the sixth and eighth assignments of error, and overrule the remaining assignments of error. The matter is remanded for proceedings consistent with this opinion.

Judgment affirmed in part,
reversed in part,
and cause remanded.

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 Summit, 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(C). 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 equally to both parties.

TIMOTHY P. CANNON
FOR THE COURT

MOORE, J.
CONCURS.

CARR, P. J.
CONCURRING IN PART, AND DISSENTING IN PART.

{¶36} I respectfully dissent from the majority's resolution of the first, second, third, fourth, and fifth assignments of error,[3] because I do not agree that R.C. 2307.60 creates an independent cause of action. Instead, I agree with our sister districts referenced in the majority opinion that R.C. 2307.60 merely codifies a plaintiff's right to file a civil action for damages arising out of a criminal act, irrespective of any criminal proceedings. In other words, the pursuit by the State of criminal proceedings does not foreclose the injured plaintiff's right to seek civil damages. R.C. 2307.60, however, is not the claim or cause of action that gives rise to damages. Rather, it merely provides the statutory authority to file discrete civil claims, the elements of which must be pleaded beyond the mere allegation of criminal activity. *See Groves v. Groves*, 10th Dist. Franklin No. 09AP-1107, 2010-Ohio-4515, ¶ 25 ("A party must rely on a separate civil cause of action, existent either in the common law or through statute, to bring a civil claim based on a criminal act.").

{¶37} I am concerned with the majority's creation of a separate cause of action based solely on the statute, because I foresee unwieldy case management ramifications. R.C. 2307.60 provides no notice to a civil defendant regarding the nature of the cause of action against which he must defend. I question how a plaintiff will attempt to prove his case and how the trial court will craft jury instructions to reflect elements of a claim which has not been identified. Moreover, interpreting the statute to permit an independent cause of action may run afoul of other statutory schemes for relief. For example, the legislature has created a precise mechanism to sue for wrongful death. *See* R.C. 2125.01, *et seq*. That statutory scheme provides the

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[3] I agree that these assignments of error should be consolidated as they are intertwined and implicate similar issues.

exclusive means by which all statutory beneficiaries may obtain relief. *See Love v. Nationwide Mut. Ins. Co.*, 104 Ohio App.3d 804, 810 (10th Dist.1995) (holding that, in the absence of fraud, a properly executed and approved settlement binds all beneficiaries and bars any further wrongful death claims), citing *Tennant v. State Farm Mut. Ins. Co.*, 81 Ohio App.3d 20, 24 (9th Dist.1991). The majority's holding in the instant case, however, may create another avenue by which a plaintiff may seek damages for wrongful death. The result is uncertainty and a lack of finality for litigants, particularly defendants who remain exposed to additional liability despite having settled a discrete wrongful death suit. I do not believe that the legislature, in enacting R.C. 2307.60, intended to dispel with the requirements that a plaintiff put a defendant on notice of the elements of the claims against him or to subject a defendant to the threat of ongoing and duplicative litigation.

{¶38} In this case, Mr. Kirsch did not allege any discrete civil causes of action. Instead, he merely invoked R.C. 2307.60 in alleging that Ms. Jacobson was entitled to damages because of the criminal acts of the various defendants. In the absence of the allegation of separate civil common law or statutory causes of action, I believe that the trial court properly granted the defendants' motions to dismiss for failure to state a claim upon which relief may be granted pursuant to Civ.R. 12(B)(6). Accordingly, I would overrule the first through the fifth assignments of error and affirm the trial court's dismissal of counts two, three, and four in the complaint.

{¶39} Given my resolution of the first five assignments of error, I would substantively address the sixth and eighth assignments of error. Moreover, I concur in the majority's disposition of the seventh and ninth assignments of error.

APPEARANCES:

GARY T. MANTKOWSKI, Attorney at Law, for Appellant.

BRET C. PERRY and BRIAN F. LANGE, Attorneys at Law, for Appellee.