

**COURT OF APPEALS  
MUSKINGUM COUNTY, OHIO  
FIFTH APPELLATE DISTRICT**

<b>DAVID M. UNTIED</b>	:	<b>JUDGES:</b>
	:	Hon. Julie A. Edwards, P.J.
	:	Hon. W. Scott Gwin, J.
<b>Plaintiff-Appellant</b>	:	Hon. John F. Boggins, J.
	:	
<b>-vs-</b>	:	
	:	<b>Case No. CT2001-0010</b>
<b>CENTURY NATIONAL BANK, ET AL</b>	:	
	:	
<b>Defendant-Appellee</b>	:	<b><u>OPINION</u></b>

**CHARACTER OF PROCEEDING:** Civil appeal from the Muskingum County Court of Common Pleas, Case No. CC2000-0481

**JUDGMENT:** Affirmed

**DATE OF JUDGMENT ENTRY:** October 23, 2001

**APPEARANCES:**

**For Plaintiff-Appellant  
DAVID M. UNTIED Pro Se  
Box 300  
Orient, OH 43146**

**For Defendant-Appellee  
GRIER D. SCHAFFER  
136 West Mound Street  
Columbus, OH 43215**

*Gwin, J.*

Plaintiff David M. Untied appeals a summary judgment of the Court of Common Pleas of Muskingum County, Ohio, entered in favor of defendant John F. McElhaney. Appellant's original complaint named multiple defendants, but at the time of the motion for summary judgment, only appellee McElhaney remained.

Appellant assigns a single error to the trial court:

**ASSIGNMENT OF ERROR**

**THE TRIAL COURT ERRED BY GRANTING DEFENDANT APPELLEE JOHN F. MCELHANEY'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW.**

Appellee John McElhaney is a police detective for the Zanesville Police Department. Appellant sued him both personally and in his official capacity, for conspiracy with multiple other defendants in making false and slanderous statements and communications about appellant and his business practices. Appellant also alleged the various defendants, including appellee, conspired to intimidate and discredit a witness whose testimony would be favorable to appellant in a pending criminal proceeding in which appellant was the defendant.

Appellant challenges the trial court's summary judgment first by alleging appellee had no leave of court to file his motion for summary judgment. The record indicates at a status conference on August 15, 2000, the trial judge set deadlines for

the case, including a deadline of December 18, 2000 for dispositive motions. Appellee's motion for summary judgment was filed on December 18, 2000. We find it was timely. Further, the record does not demonstrate appellant objected to the motion for summary judgment, and in fact, this court could find no response to the motion for summary judgment.

We find the trial court's status conference judgment entry constitutes leave of court for the summary judgment, and further, that appellant waived his objections to the motion for summary judgment both when he failed to object, and when he failed to defend.

Appellant urges because of the alleged procedural and irregularities, the judgment of the court is wrong as a matter of law. Our review of the record discloses no procedural irregularities, and appellant does not challenge the ruling on its merits.

The assignment of error is overruled.

For the foregoing reasons, the judgment of the Court of Common Pleas of Muskingum County, Ohio, is affirmed.

By Gwin, J.,

Edwards, P.J., and

Boggins, J., concur

---



---

---

JUDGES