

IN THE SUPREME COURT OF OHIO

2646 MAYFIELD, LLC, <i>et al.</i> ,	:	CASE NO.
	:	
Appellants-Plaintiffs,	:	
	:	On appeal from the Eighth District
-vs-	:	Court of Appeals, Cuyahoga County
CUYAHOGA COUNTY	:	Case No. CA-22-112039
TREASURER, <i>et al.</i> ,	:	
	:	ORAL ARGUMENT REQUESTED
Appellees-Defendants.	:	

**MEMORANDUM IN SUPPORT OF JURISDICTION
OF APPELLANTS-PLAINTIFFS
2646 MAYFIELD, LLC AND LAKEVIEW HOLDING (OH), LLC**

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**EXPLANATION OF WHY THIS CASE IS A CASE
OF PUBLIC AND GREAT GENERAL INTEREST AND
INVOLVES SUBSTANTIAL CONSTITUTIONAL QUESTIONS**

The instant matter involves the purchase and assignment of tax certificates issued by Appellee-Defendant Cuyahoga County Treasurer (“Appellee Treasurer”) for six residential properties in Cuyahoga County. Appellant Lakeview Holding (OH), LLC (“Appellant Lakeview”) remitted a payment of \$115,545.05 to Appellee Treasurer for delinquent taxes in connection therewith. Appellant Lakeview eventually assigned its interests to Appellant-Plaintiff 2646 Mayfield, LLC. The Appellants complied with the statutory requirements to compel Appellees-Defendants Cuyahoga County, Cuyahoga County Treasurer, and/or Cuyahoga County Executive (“Appellees”) to provide and/or certify the Notices of Intent to enable foreclosure proceedings for each of the subject properties. The Appellees failed and/or refused to do so, allowed the lien to allegedly lapse or expire, and then failed and/or refused to either proceed accordingly or reimburse the Appellants for the money paid for the tax certificates.

Substantively, the Court of Appeals improperly opined that the Appellants, not the Appellees, failed to comply with the statutory requirements and that the Appellees, political subdivisions, were not required to proceed or at least reimburse the money paid. The Court of Appeals improperly created a strict compliance test regarding the statutory requirements. Procedurally, the Court of Appeals also improperly opined that, despite having never filed an answer to the controlling complaint against them, the Appellees were still entitled to summary judgment and the Appellants were not entitled to default judgment. Accordingly, this is a case of public and great general interest and involves substantial constitutional questions as both the trial court and the Eighth District Court of Appeals violated Constitutional, statutory, and Ohio law.

The Appellants and other tax certificate holders have no adequate remedy in the ordinary course of the law to compel the Appellees to comply with their respective obligations under Ohio law and the Cuyahoga County Charter. The Appellants have a clear legal right to seek a writ of mandamus from the trial court directing the Appellees to issue the Notices of Intent so the Appellants can foreclose on the subject Tax Certificates and the Appellants seek such writ of mandamus against the Appellees. The Court should grant jurisdiction in this matter for the reasons set forth herein.

STATEMENT OF THE FACTS

In 1997, the Ohio legislature passed a law allowing counties to collect delinquent real property taxes by selling Tax Certificates to third party investors, entitling those investors to a tax lien against the delinquent property as set forth Ohio Revised Code Section 5721.30, *et seq.* Tax lien certificates in Appellee Cuyahoga County are negotiated and sold in bulk to private investors, with the bulk sale including any number of certificates as determined by Appellee Treasurer.

Pursuant Section 5721.31(A)(1), Appellee Treasurer has the authority to select from the list of properties with delinquent taxes which properties will be included in a tax lien certificate sale. R.C. 5721.31(A)(1). Appellee Treasurer also has wide discretion in determining the terms of the sale. R.C. 5721.33. The tax lien certificate purchaser pays the county the negotiated price and the purchaser then holds the first priority lien against each of the properties in the amount of the respective delinquencies. If the lien against a property is not redeemed within twelve months, the tax lien certificate purchaser may file a foreclosure action with respect to that property. If a

property is foreclosed and is not disposed after twice being offered for sale at sheriff's auction, title is forfeited to the tax lien certificate purchaser pursuant to Section 5721.40.

In May, 2010, Appellant Lakeview Holding and/or its assignees purchased Tax Certificates for residential properties in Cuyahoga County from the Appellees in or around May, 2010. In May, 2015, Appellant Lakeview Holding and/or its assignees paid for Notices of Intent to Foreclosure to be certified by the Appellees. The Notices of Intent to Foreclosure were attached and incorporated as exhibits, which were ignored by the Court of Appeals.

Appellant Lakeview Holding and/or its assignees repeatedly requested the certification of the Notices of Intent either by themselves or through their attorneys, but the Appellees failed and/or refused to certify the Notices. Appellant Lakeview Holding and/or its assignees lawfully assigned the Tax Certificates to Appellant 2646 Mayfield, LLC through a holding company and Appellant 2646 Mayfield, LLC requested the Tax Certificates be recorded and the Notices of intent be certified and, again, the Appellees failed and/or refused to do so. Appellant 2646 Mayfield, LLC ("Appellant Mayfield") and the previous owners of the Tax Certificates have been unable to lawfully prosecute a foreclosure on the Tax Certificates due to the failure of the Appellees to follow statute and certify the Notices of Intent to Foreclose.

The Appellees entered into a contract with Appellant Lakeview Holding for the sale of Tax Certificates on various properties, including the sale of the subject properties. As part of the contract between the parties, the Appellees were obligated to perform all acts required by law to allow Appellant Lakeview Holding or its lawful assignees, including Appellant Mayfield, to properly foreclose on any subject properties.

The Appellants made payments to the Appellees for the Tax Certificates and the certification of the Notices of Intent to Foreclose and the Appellees have refused to issue said

notices despite receiving all funds. The Appellees have not adequately compensated the Appellants or recognized the extent of the damages suffered due to the prolonged refusal of the Appellees to perform the duly and lawfully appointed duties. As a direct and proximate result thereof, the Appellees have received an unfair and unjust benefit of the bargain, at the Appellants' expense, by the reception of the funds for the Tax Certificates and Notices of Intent and the Appellees' failure and/or refusal to certify said Notices of Intent to allow the Appellants to recoup the funds paid to the Appellees. The Appellees, by failing and/or refusing to perform their lawfully appointed duties under the Ohio revised Code and the contract between the parties, substantially and materially breached the contract.

Pursuant to Ohio Revised Code Section 5721.37, “[a]t any time after one year from the date shown on the tax certificate as the date the tax certificate was sold, and not later than the end of the certificate period, a certificate holder, except for a county land reutilization corporation, may file with the county treasurer a request for foreclosure, or a private attorney on behalf of the certificate holder may file with the county treasurer a Notice of Intent to Foreclose, on a form prescribed by the tax commissioner, provided the certificate parcel has not been redeemed under division (A) or (C) of section 5721.38 of the Revised Code and at least one certificate respecting the certificate parcel, held by the certificate holder filing the request for foreclosure or Notice of Intent to Foreclose and eligible to be enforced through a foreclosure proceeding, has not been voided under section 5721.381 of the Revised Code”. Pursuant to Section 5721.37(C)(1), “[w]ith respect to a certificate purchased under section 5721.32, 5721.33, or 5721.42 of the Revised Code, if the certificate parcel has not been redeemed and at least one certificate respecting the certificate parcel, held by the certificate holder filing the request for foreclosure and eligible to be enforced through a foreclosure proceeding, has not been voided under section 5721.381 of the

Revised Code, the county treasurer, within five days after receiving a foreclosure request and the payment required under division (B) of this section, shall certify notice to that effect to the county prosecuting attorney and shall provide a copy of the foreclosure request. The county treasurer also shall send notice by ordinary first class or certified mail to all certificate holders other than the certificate holder requesting foreclosure that foreclosure has been requested by a certificate holder and that payment for the tax certificates is forthcoming".

The Appellees failed and/or refused to perform these required tasks under the law when Appellant Mayfield, or its assignees, properly issued a certification request as required under the Ohio Revised Code. The failure and refusal of the Appellees to certify the Notices of Intent to Foreclose has impaired and/or prevented the Appellants, and/or assignors and/or assignees, from performing their respective legally prescribed right to foreclose on the subject Tax Certificates.

ARGUMENTS IN SUPPORT OF PROPOSITIONS OF LAW

Proposition of Law No. I: A trial court errs in granting a motion for summary judgment filed by a defendant and/or denying a motion for default judgment against that defendant despite that defendant failing to file an answer to the controlling complaint simply because the trial court failed to formally deny in writing that defendant's prior Civil Rule 12 motion for more definite statement and/or motion to dismiss, particularly notwithstanding moving forward on dispositive motions.

On December 20, 2019, the Appellants refiled the action. On December 27, 2019, the Appellants filed a First Amended Complaint. On January 23, 2020, the Appellees filed a Motion to Dismiss and Motion for More Definite Statement. On February 3, 2020, the Appellants filed a Brief in Opposition thereto.

On February 18, 2020, the Appellants filed a Motion for Leave to File a Second Amended Complaint, which the trial court. On June 30, 2020, the Appellees filed another Motion for More

Definite Statement.

On August 13, 2020, the Appellants filed the Second Amended Complaint. On August 24, 2020, the Appellees filed another Motion to Dismiss and Motion for Definite Statement. On October 26, 2020, the Appellants filed a Response/Brief in Opposition to the Appellees' Motion for More Definite Statement and Motion to Dismiss. The Appellants filed a Supplemental Response on November 13, 2020. On January 6, 2020, the trial court denied the Appellees' Motion for More Definite Statement and Motion to Dismiss.

On April 26, 2021, the Appellees filed a Motion for Summary Judgment. On June 1, 2021, the Appellants filed a Brief in Opposition to the Motion for Summary Judgment. The Appellees filed a Reply in support of their Motion for Summary Judgment.

The Appellants also filed a Motion for Default Judgment on June 11, 2021, because notwithstanding the litany of various motions filed by the Appellees, the Appellees did not file any answer to the original Complaint, the Amended Complaint or the Second Amended Complaint filed by the Appellants. On June 14, 2021, the Appellees filed a Brief in Opposition to the Motion for Default Judgment. The Appellants filed a Reply thereto on June 18, 2021.

On September 6, 2022, the trial court issued an order dismissing the claims against the Cuyahoga County Council. On October 11, 2022, the trial court granted the Appellees' Motion for Summary Judgment and ignored all other pending motions and requests. The trial court's Journal Entry, dated October 11, 2021, is a meaningless, paltry, one-liner judgment.

On October 13, 2022, the Appellants timely filed a Notice of Appeal. After the matter was briefed and oral argument was conducted, the Court of Appeals issued a Journal Entry and Opinion on July 27, 2023, affirming the trial court's Journal Entry.

The Appellees did not file any responsive pleading to the original Complaint (December

20, 2019), the Amended Complaint (December 27, 2019) or the Second Amended Complaint (August 13, 2020). A pleading, under the civil rules, does not include a motion to dismiss, nor a motion for summary judgment. Civ.R. 7(A). Although Civil Rule 56(B) permits a party to file a motion for summary judgment “at any time”, summary judgment is not a replacement for a responsive pleading nor does it toll the deadline for a responsive pleading to be filed.

When a party fails to expressly deny a specific allegation contained in a complaint, that allegation is generally considered admitted by the party pursuant to Civil Rule 8(D). Montefiore Home v. Fields, 8th Dist. No. 107359, 2019-Ohio-1989, ¶6; Burdge v. On Guard Sec. Servs., Inc., 1st Dist. No. C-050522, 2006-Ohio-2092; State ex rel. Craig v. Scioto Cty., 117 Ohio St.3d 158, 2008-Ohio-706, ¶20. As the Appellees failed to file any responsive pleading to the Appellant’s Second Amended Complaint (or any of the previous versions), all of the facts set forth therein are, at the very least, not denied by the Appellees, as political subdivisions.

The Appellees were not entitled to summary judgment and the Appellants were entitled to default judgment. The Appellees did not file any responsive pleading to the original Complaint (December 20, 2019), the Amended Complaint (December 27, 2019) or the Second Amended Complaint (August 13, 2020). The Appellees were in default of the controlling pleading (to wit: the Second Amended Complaint), and they certainly were not entitled to summary judgment as a result thereof.

Generally, when a party fails to expressly deny a specific allegation contained in a complaint, that allegation is considered admitted by the party pursuant to Civil Rule 8(D). Montefiore Home v. Fields, 2019-Ohio-1989, at ¶6; Burdge v. On Guard Sec. Servs., Inc., 2006-Ohio-2092. By virtue of a Appellees’ failure to specifically deny allegations and averments in the complaint, the Appellees did not expressly deny them. Id.; State ex rel. Craig v. Scioto Cty.,

2008-Ohio-706, at ¶20.

Motions pursuant to Civil Rule 12 are considered on the pleadings alone and discovery is of no consequence until disposition of a Civil Rule 12 motion. See, e.g., Oliver v. Thomson Consumer Electronics, Inc., 9th Dist. No. 97CA006948, 98-LW-5860. In addition, Ohio law is clear that when a court does not rule on a pretrial motion, that motion is generally presumed to have been denied. State ex rel. The V. Cos. v. Marshall, 81 Ohio St.3d 467, 1998-Ohio-329, syllabus; The James Lumber Company v. Nottrodt, 8th Dist. No. 97288, 2012-Ohio-1746, ¶19; State of Ohio ex rel. Ames v. Rootstown Township Board of Trustees, 11th Dist. Nos. 2019-P-0114, 2020-P-0001, 2020-Ohio-3855 (a trial court is presumed to have denied a Civil Rule 12 motion once it proceeds with the litigation towards trial).

The Appellee's were in default of answer the Appellants' Second Amended Complaint notwithstanding the filed Motion for More Definite Statement and Motion to Dismiss. The Appellees admit that they did not file a pleading to the Appellant's Second Amended Complaint (or prior versions thereof) and that all allegations and averments therein were not formally denied by the Appellees. The Appellees did not file any responsive pleading to the original Complaint (December 20, 2019), the Amended Complaint (December 27, 2019) or the Second Amended Complaint (August 13, 2020). The Appellees were in default of the controlling pleading (to wit: the Second Amended Complaint), and they certainly were not entitled to summary judgment as a result thereof. Ohio law clearly and unequivocally states that "the fact that the trial court proceeded to the merits of [the] motion for summary judgment supports the conclusion that the trial court denied [the] motion to dismiss". 84 Lumber Co., L.P. v. Houser, 188 Ohio App.3d 581, 2010-Ohio-3683.

If a party fails to deny the specific allegations of a pleading against it, those allegations are considered admitted by the party. Civ.R.8(D); Shearer v. Creekview Village of Broadview Hts. Homeowners' Assn., Inc., 8th Dist. No. 94549, 2010-Ohio-5786, ¶13. An admission, whether expressly or by omission or silence, dispenses with the need to present evidence and is equivalent to proof of the fact. Crowl Lumber Co., Inc. v. Wallace, 7th Dist. No. 08 CA 851, 2008-Ohio-5733, ¶24; Haney v Law, 1st Dist. No. C-070313, 2008-Ohio-1843, ¶7; Badalamenti v. Kirkland (Nov. 29, 1991), 11th Dist. No. 90-L-15-151, 1991 Ohio App. LEXIS 570; Rhoden v. Akron (1988), 61 Ohio App.3d 725, 727; Gerrick v. Gorsuch (1961), 172 Ohio St. 417, syllabus (“A party who has alleged and has the burden of proving a material fact need not offer any evidence to prove that fact if it is judicially admitted by the pleadings of the adverse party. In such an instance, any evidence with respect to that fact can have no material effect”); Faieta v. World Harvest Church, 10th Dist. No. 08AP-527, 2008-Ohio-6959, ¶47; Reed v. Toledo Edison Co. (July 10, 1992), 6th Dist. No. L-91-259, 1992 Ohio App. LEXIS 3572. Moreover, the admissions cannot be changed to conform to the “evidence”. See, e.g., State Farm Mut. Auto. Ins. Co. v. Dicenzo (1981), 1 Ohio App.3d 68, 69; Lamb v. Carver, 8th Dist. No. 70673, 1997 Ohio App. LEXIS 2074, at 2-3 (May 15, 1997).

Similarly, a motion for summary judgment that is not permitted to be made until after the pleadings are closed would not toll the time for filing an answer. A motion for summary judgment is not a motion made under Civil Rule 12; and thus, it does not toll the time for an answer. Civil Rule 56(A) provides that “a party may move for summary judgment at any time after the expiration of the time permitted under these rules for a responsive motion or pleading by the adverse party, or after service of a motion for summary judgment by the adverse party”. Civil Rule 56(A) does not permit a defendant to file a motion for summary judgment prior to

answering. Adlaka v. Giannini, 7th Dist. No. 05 MA 105, 2006-Ohio-4611 , ¶26. Without an answer, the pleadings are not closed. PSE Credit Union, Inc. v. Wells, 8th Dist. No. 104075, 2016-Ohio-7780, ¶16; JP Morgan Chase Bank, N.A. v. Belden Oak Furniture Outlet, Inc., 5th Dist. No. 2010CA00049, 2010-Ohio-4444, ¶¶20-22; Lane ex rel. Taxpayers & Citizens of Mentor v. City of Mentor, 11th Dist. No. 99-L-045, 2000 Ohio App. LEXIS 6101, p.9.

Simply put, the Appellees refused to answer or identify the use and disposition of the money paid by the Appellants for the Tax Certificates. The Appellees even failed and/or refused to even produce the contracts between the County and the tax certificate buyers.

The Appellees failed to file any responsive pleading to the Appellant's Second Amended Complaint and all of the allegations and averments therein were, at the very least, not denied thereby. The Appellants presented evidence in support of the request for judgment. The Appellees were not entitled to summary judgment and the Motion for Summary Judgment should have been denied. The trial court equally erred in failing to rule upon the Appellants' Motion for Default Judgment.

The Court of Appeals merely held that “[t]he responsive period never commenced”. (Decision, ¶13). The Court of Appeals incorrectly opined that the Appellees were “under no obligation to file a responsive pleading”. Id. However, the Appellees' Civil Rule 12 motions were denied by the trial court, either expressly or by proceeding forward, and the Appellees never filed a responsive pleading to any Complaint, amended or otherwise. While that assumption of denial generally arises after a case has been concluded, it was inherently unfair and prejudicial by the trial court to allow the Appellees to try the case through the discovery process and utilize dispositive motion proceedings, while they remained unconstitutionally and unduly protected by an allegedly undisposed Civil Rule 12 motion.

A pleading, under the civil rules, does not include a motion to dismiss, nor a motion for summary judgment. Civ.R. 7(A). Although Civil Rule 56(B) permits a defending party to file a motion for summary judgment “at any time”, a motion for summary judgment is not a replacement for a responsive pleading nor does it toll the deadline for a responsive pleading to be filed. The Appellees did not specifically or formally deny the allegations in the Appellants’ Second Amended Complaint and the Appellants otherwise established their *prima facie* case. Thus, the Appellees were not entitled to summary judgment and the Appellant was entitled to default judgment, and the trial court and Court of Appeals equally erred in ruling otherwise.

Proposition of Law No. II: A political subdivision is statutorily and constitutionally bound to act in furtherance of a foreclosure proceeding on sold or assigned tax certificates, and a trial court is required to issue a Writ of Mandamus and/or judgment in favor of a plaintiff seeking to enforce that duty, when that plaintiff-tax lien holder substantially complies with the statutory requirements, or the political subdivision is bound to reimburse any money paid for said tax certificates if the political subdivision does not act in furtherance of a foreclosure proceeding regardless of the cause or reason therefor.

The Court of Appeals incorrectly held that the Appellants failed to comply with Section 5721.37(A) by filing a Notice of Intent. (Decision, ¶17). The Court of Appeals held that “[b]oth the Notice of Intent and the payment are statutory prerequisites to the county treasurer acting in furtherance of a foreclosure proceeding”. Id. at ¶18. As the payment was not an appellate dispute, the Court of Appeals focused on the presentation of a Notice of Intent, and opined that the Appellees were under no duty to act because the Appellants allegedly failed to file a Notice of Intent as required by Section 5721.37(A). Id. Finally, the Court of Appeals erred by holding that a county treasurer is not required to reimburse payments made to purchase tax certificates should the lien expire or otherwise. Id. at ¶19.

The duties imposed upon the Appellees may be commanded by a writ of mandamus. See,

e.g., State ex rel., Rogers v. Taylor, et al., Trustees (1949), 152 Ohio St. 241. A mandamus is the proper vehicle for compelling a governmental entity to fulfill its statutory duties. State ex rel. Levin v. Sheffield Lake, 70 Ohio St.3d 104, 108, 1994-Ohio-385.

Ohio Revised Code Section 5721.37 establishes the procedure to foreclose on a tax certificate. Foreclosure proceedings begin when the certificate holder's attorney files a foreclosure complaint in the name of the certificate holder to enforce the lien. R.C. 5721.37(C) contains two filing requirements. The attorney must attach to the foreclosure complaint (1) a copy of the notice of intent to foreclose, and (2) a certificate by the county treasurer that the tax certificate has not been redeemed. Section 5721.37(A)(1) provides, that "a private attorney on behalf of the certificate holder may file with the county treasurer a notice of intent to foreclose, on a form prescribed by the tax commissioner, provided the certificate parcel has not been redeemed under division (A) or (C) of section 5721.38 of the Revised Code".

Thus, a notice of intent to foreclose must be filed with the county treasurer prior to the commencement of any foreclosure proceedings. R.C. 5721.37(C)(2). A notice of intent to foreclose must be filed "on a form prescribed by the tax commissioner". R.C. 5721.37(A)(1). The Appellants established that notices of intent to foreclose were attempted to be filed on a sufficient form, but it was Appellee Treasurer who prevent such action. In Cuyahoga County, once payment was made, the notices were issued so that payment was equivalent to requesting the notice of intent. Appellee Treasurer simply failed and/or refused to do so.

The Court of Appeals improperly created a strict compliance test regarding the aforementioned statutory requirements. Courts of Ohio have consistently held that exact and strict compliance is not required but, instead, substantial compliance with mandatory statutory requirements is sufficient. See State, ex rel. Polcyn, v.. Burkhart (1973), 33 Ohio St. 2d 7; State,

ex rel. Maurer, v.. Franklin Cty. Bd. of Elections (1987), 33 Ohio St. 3d 53. No reason for a different rule with respect to Ohio Revised Code Chapter 5731 is proven or appropriate.

Section 5731.37(C)(1) mandates that Appellee Treasurer “shall certify notice to that effect to the county prosecuting attorney and shall provide a copy of the foreclosure request”. Ohio Revised Code Section 5731.37(C)(1) unequivocally states that Appellees shall issue the Notice of Intent within five days. Yet, the Appellees refused to provide the Notices of Intent forms for the subject properties and/or failed to properly certify the same. The Appellant and other tax certificate owners are adversely affected and continue to be adversely affected by Appellees’ failure to follow Ohio Revised Code Section 5731.37 (C)(1) and the Court of Appeals’ willingness to allow political subdivisions to forego their duties while keeping ill-gotten gains.

The Appellants and other tax certificate holders have no adequate remedy in the ordinary course of the law to compel the Appellees to comply with their respective obligations under Ohio law and the Cuyahoga County Charter. The Appellants have a clear legal right to seek a writ of mandamus from the trial court directing the Appellees to issue the Notices of Intent so the Appellants can foreclose on the subject Tax Certificates. The Appellants were not required to prove that they met the statutory requirements for perfecting the tax certificates is without merit. Section 5721.37(F) provides in pertinent part that “[t]he tax certificate purchased by the certificate holder is presumptive evidence in all courts and boards of revision and in all proceedings, including, without limitation, at the trial of the foreclosure action, of the amount and validity of the taxes, assessments, charges, penalties by the court and added to such principal amount, and interest appearing due and unpaid and of their nonpayment”. The trial court erred in granting the summary judgment and the Appellees’ non-compliance should not be countenanced.

The statute further mandates that the Appellees “shall pay the certificate holder interest at the rate of eighteen per cent per year . . . beginning on the day the certificate holder paid the amounts under those divisions and ending on the day the parcel is redeemed under this section”. Prior to the expiration of the six-year limitation set forth on the Tax Certificates, the Appellants expressly demanded in writing the Notices of Intent and, thereafter, reimbursement with interest as mandated by Section 5721.38 and the express language contained on the Tax Certificates if in fact one or both were redeemed and/or released. The Appellees failed and/or refused to do so and the trial court erred in holding otherwise through its silence. Thus, the trial court and the Court of Appeals erred to the prejudice of the Appellants as set forth above.

CONCLUSION

For the foregoing reasons, this case involves a matter of public and of great general interest and involves substantial constitutional questions. Thus, the Appellants respectfully request that this Honorable Court grant and accept jurisdiction in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ____6th____ day of ____September_____, 2023, a true and accurate copy of the foregoing was sent electronically to Brendan D. Healy and Adam D. Jutte, Cuyahoga County Prosecutors, Office, Attorneys for Appellees-Defendants, at

bhealy@prosecutor.cuyahogacounty.us and ajutte@prosecutor.cuyahogacounty.us.

/s/ David N. Patterson, Esq.
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APPENDIX