

**IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY**

STATE OF OHIO ex rel.
BRIAN M. AMES,

Relator-Appellant,

BRIAN M. AMES,

Plaintiff-Appellant,

- VS -

WEST GEAUGA LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent/Defendant-
Appellee.

CASE NO. 2025-G-0049

Civil Appeal from the
Court of Common Pleas

Trial Court No. 2025 M 000622

OPINION AND JUDGMENT ENTRY

Decided: August 24, 2026

Judgment: Affirmed

Brian M. Ames, pro se, 2632 Ranfield Road, Mogadore, OH 44260 (Relator/Plaintiff-Appellant).

Matthew John Markling, McGown & Markling Co., L.P.A., 1894 North Cleveland-Massillon Road, Akron, OH 44333 (For Respondent/Defendant-Appellee, West Geauga Local School District Board of Education).

SCOTT LYNCH, J.

{¶1} Relator-appellant, Brian M. Ames, appeals the Order of the Geauga County Court of Common Pleas denying his Motion for the Expedited Dismissal of the Counterclaim filed by respondent-appellee, West Geauga Local School District Board of Education. For the following reasons, we find the present action exempt from the

application of the Protection of Public Expression Act and affirm the decision of the court below.

Procedural History

{¶2} On August 29, 2025, Ames filed a Complaint in Mandamus against the Board of Education raising a claim under R.C. 121.22, the Open Meetings Act.

{¶3} On November 10, 2025, the Board of Education filed an Answer and Counterclaim. The counterclaim sought to impose liability on Ames for allegedly frivolous conduct pursuant to R.C. 2323.51, R.C. 121.22(I), and Civ.R. 11, and sought a declaration that Ames is a vexatious litigator pursuant to R.C. 2323.52.

{¶4} On November 11, 2025, Ames filed a Motion for Expedited Dismissal of Counterclaim under Revised Code Chapter 2747. Ames sought an order granting expedited relief by “1) setting a hearing within 60 days of the date of the filing of this motion wherein the parties may present any evidence that could be considered in ruling on a motion for summary judgment under Rule 56 of the Rules of Civil Procedure, and 2) allowing limited of specific information [sic] that cannot be obtained otherwise pursuant to R.C. 2747.03(C).”

{¶5} On December 30, 2025, the trial court denied the Motion for Expedited Dismissal. On the same date, Ames filed a Notice of Appeal.

Assignments and Cross-Assignments of Error

{¶6} On appeal, Ames raises the following assignments of error:

[1.] The trial court committed reversible error by denying Appellant’s Motion for Expedited Dismissal under R.C. Chapter 2747.

[2.] The trial court committed reversible error by denying Appellant’s Motion for Expedited Dismissal under R.C. Chapter 2747 without conducting the hearing mandated by R.C. 2747.04(A)(1).

{¶7} The Board of Education raises the following cross-assignments of error:¹

[2.] The instant appeal must be dismissed on res judicata grounds.

[3.] The decision of the Trial Court must be affirmed because the frivolous and vexatious litigator claims asserted against Ames are not based upon Ames exercising a constitutionally protected activity on a matter of public concern.

[4.] The decision of the Trial Court must be affirmed because R.C. 2323.51, R.C. 121.22(I)(2)(b), Civ.R. 11, and R.C. 2323.52 claims are exempt from R.C. Chapter 2747.

[5.] The decision of the Trial Court must be affirmed because the Board pled claims upon which relief can be granted.

[6.] The decision of the Trial Court must be affirmed because Ames failed to meet his burden of proving both that there is no genuine issue as to any material fact and Ames is entitled to judgment as a matter of law on the frivolous and vexatious litigator claims.

Revised Code Chapter 2747. Protection of Public Expression

{¶8} The Protection of Public Expression Act, effective April 9, 2025, “applies to a cause of action asserted in a civil action against a person based on any of the following:”

(1) The person’s communication in a legislative, executive, judicial, administrative, or other governmental proceeding;

(2) The person’s communication on an issue under consideration or review in a legislative, executive, judicial, administrative, or other governmental proceeding;

(3) The person’s exercise of the right of freedom of speech and of the press, the right to assemble and petition, and the right of association, guaranteed by the United States Constitution or the Ohio Constitution, on a matter of public concern.

R.C. 2747.01(B).

1. The Board of Education moved to withdraw the first cross-assignment of error prior to oral argument.

{¶9} R.C. Chapter 2747 does not apply to “[a] legal action against a governmental unit or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity.” R.C. 2747.01(C)(1).

{¶10} “Not later than sixty days after a party is served with a complaint, cross-claim, counterclaim, third-party claim, or other pleading that asserts a cause of action to which this chapter applies, the party may file a motion for expedited relief to dismiss the civil action or claim.” R.C. 2747.02.

{¶11} When a motion for expedited relief to dismiss a civil action or claim is filed, “the court shall stay all other proceedings in the action between the moving party and responding party” and “conduct a hearing not later than sixty days after the filing of a motion for expedited relief.” R.C. 2747.03(A)(1) and R.C. 2747.04(A)(1).

{¶12} “If the court denies a motion for expedited relief under section 2747.04 of the Revised Code, the denial is a final order under section 2505.02 of the Revised Code and the moving party has an interlocutory right of appeal under that section.” R.C. 2747.05(C); R.C. 2505.02(B)(9) (“[a]n order that denies a motion for expedited relief pursuant to section 2747.04 of the Revised Code” constitutes “a final order that may be reviewed, affirmed, modified, or reversed”).

Second Cross-Assignment of Error

{¶13} We will first consider the Board of Education’s cross-assignment of error in which it is argued that the present appeal must be dismissed on the grounds of *res judicata*. The Board of Education cites original actions filed by Ames in the Supreme Court of Ohio based on alleged violations of R.C. 121.22: *State ex rel. Ames v. Andover Village Council*, Supreme Court Case No. 2025-1097, and *State ex rel. Ames v. Stow-*

Munroe Falls City School Dist. Bd. of Edn., Supreme Court Case Nos. 2025-1366, 2025-1424, and 2025-1474.

{¶14} In these cases, counterclaims were filed based upon Ames’s purportedly frivolous and vexatious conduct. As in the present case, Ames filed motions to dismiss the counterclaims pursuant to R.C. Chapter 2747. On December 24, 2025, the Supreme Court in *Andover Village* and *Stow-Monroe Falls* denied Ames’s motions for expedited dismissal of counterclaim “[u]pon consideration” and without further explanation. The Board of Education concludes: “Since each of the separate orders from the Ohio Supreme Court denying essentially the same R.C. 2747.02 motions are conclusive as to the rights of the Board and Ames and constitute an absolute bar to the underlying R.C. 2747.02 motion ... involving the same claims, demands, and causes of action, this Honorable Court must dismiss the instant appeal on res judicata grounds.” Merit Brief of Appellee at 17-18.

Res Judicata

{¶15} “Under the doctrine of res judicata, ‘a final judgment or decree rendered on the merits by a court of competent jurisdiction is a complete bar to any subsequent action on the same claim between the same parties or those in privity with them.’” (Citation omitted.) *Jones v. Wainright*, 2020-Ohio-4870, ¶ 6. “In order to invoke res judicata, one of the requirements is that the parties to the subsequent action must be identical to or in privity with those in the former action.” *Kirkhart v. Keiper*, 2004-Ohio-1496, ¶ 8.

Res Judicata is not Grounds for Dismissing the Appeal

{¶16} We reject the Board of Education’s argument on cross-appeal. In the first instance, the Board of Education has neither argued nor demonstrated that it is in privity

with the Andover Village Council and/or the Stow-Munroe Falls City School District Board of Education. Without privity, *res judicata* is inapplicable.

{¶17} Moreover, we are not aware of any compelling authority for the proposition that *res judicata* constitutes grounds for the dismissal of an appeal (as opposed to grounds on which an appeal may be decided). The Board of Education cites *Zapor Architects Group, Inc. v. Riley*, 2004-Ohio-3201 (7th Dist.) for the proposition that “a motion to dismiss an appeal is proper on *res judicata* grounds.” Merit Brief of Appellee at 17. *Zapor* only supports this proposition incidentally.

{¶18} In *Zapor*, the court of appeals considered a motion to dismiss the appeal on the basis of *res judicata*. The court rejected the argument because its proponent did not alert the court “to any prior judgment or adjudication that would have preclusive effect,” but, rather, referred to a document labeled as “Award of Arbitrator” issued subsequent to the judgment under appeal. *Id.* at ¶ 15. The court did not consider whether *res judicata* properly applied to a case pending on appeal, but concluded instead that, “[a]s *res judicata* is concerned with the preclusive effect of *prior* judgments, the doctrine cannot be used to justify dismissal of the instant appeal.” *Id.*

{¶19} Typically, *res judicata* is raised as an affirmative defense pursuant to Civil Rule 8(C) and serves as a basis for summary judgment under Civil Rule 56. Notably, *res judicata* is not recognized as a cause for the dismissal of an action for failure to state a claim. See *State ex rel. Green v. Wetzel*, 2019-Ohio-4228, ¶ 6 (“the court of appeals erred when it dismissed Green’s mandamus complaint on *res judicata* grounds,” inasmuch as “[r]es judicata is an affirmative defense, Civ.R. 8(C), that ‘may not be raised by motion to dismiss under Civ.R. 12(B)’”) (citation omitted).

{¶20} Regardless, Civil Rules 8(C), 12 and 56 are “clearly inapplicable” and “shall not apply to procedure ... upon appeal to review any judgment, order or ruling.” Civ.R. 1(C); *Nickelson v. Knab*, 2012-Ohio-579, ¶ 2 (“[u]nder ordinary circumstances, neither the Ohio Rules of Criminal Procedure nor the Ohio Rules of Civil Procedure are applicable to cases on appeal”) (citation omitted); *McDougald v. Kuhn*, 2020-Ohio-4924, ¶ 10 (“neither Civ.R. 12(C) nor Civ.R. 55 applies to proceedings on appeal”). Accordingly, *res judicata* is not grounds for dismissing the present appeal.

{¶21} The second cross-assignment of error is without merit.

First Assignment of Error; Protection of Public Expression Act

{¶22} In his first assignment of error, Ames claims the trial court misconstrued the Protection of Public Expression statute when it denied his Motion for Expedited Dismissal. Matters of statutory interpretation are considered questions of law which are reviewed de novo. *729 W. 130th St., L.L.C. v. Hinkley Twp. Bd. of Zoning Appeals*, 2026-Ohio-595, ¶ 16; *Z.J. v. R.M.*, 2025-Ohio-5662, ¶ 17.

{¶23} The trial court denied Ames’s Motion for Expedited Dismissal “based on the inapplicability of Chapter 2747 to the Defendant School Board per R.C. § 2747.01(C)(1).” This provision provides: “This chapter does not apply to ... [a] legal action against a governmental unit or an employee or agent of the governmental unit who was acting or purporting to act in an official capacity.” R.C. 2747.01(C)(1). Ames contends that the foregoing provision only applies to the original action (mandamus), not the counterclaim (vexatious litigator): “The Board’s counterclaim is a legal action brought by [a] governmental unit against a person seeking the enforcement of R.C. 121.22. Since the

counterclaim is not *against* the Board but by the Board, R.C. Chapter 2747 applies.” Assignments of Error and Brief at 3-4.

{¶24} Acknowledging that the issue is one of first impression (at least in this Court), we conclude that the trial court was correct in its interpretation of R.C. 2747.01(C)(1), *i.e.*, that the inapplicability of the Protection of Public Expression Act to “legal action[s] against a governmental unit” encompasses the counterclaim filed by the Board of Education in the present case.

{¶25} We acknowledge that this construction may produce tension with the Act’s apparent purpose of protecting individuals who engage in protected public expression from retaliatory litigation — a tension that is particularly acute where, as here, the retaliatory claim is lodged by the very governmental unit the relator is suing — but where the statutory language is plain and unambiguous, it is not the role of this court to override what the General Assembly has enacted in favor of what it might have intended. *Slingluff v. Weaver*, 66 Ohio St. 621 (1902), paragraph two of the syllabus.

Principles of Statutory Construction

{¶26} The first principle in the interpretation of statutes is that “we look at the language of the statute to determine its meaning.” 729 W. 130th St., 2026-Ohio-595 at ¶ 17; *Slingluff* at paragraph two of the syllabus (“[t]he question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact”). “When the statutory language is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said.” *Jones v. Action Coupling & Equip., Inc.*, 2003-Ohio-1099, ¶ 12.

{¶27} Adherence to the statutory text includes reliance “on the definitions provided

by the legislative body.” *Lingle v. State*, 2020-Ohio-6788, ¶ 15. “If a legislative definition is available, we construe the words of the statute accordingly.” *State v. Gonzales*, 2017-Ohio-777, ¶ 4, citing R.C. 1.42 (“[w]ords and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly”).

“Action” Statutorily Defined

{¶28} Within Title XXIII of the Revised Code, governing courts of common pleas, the following definition of “action” is provided: “An action is an ordinary proceeding in a court of justice, involving process, pleadings, and ending in a judgment or decree, by which a party prosecutes another for the redress of a legal wrong, enforcement of a legal right, or the punishment of a public offense.” R.C. 2307.01.

{¶29} The foregoing definition of “action” established that an “action” involves pleadings. Ames’s Complaint in Mandamus constitutes “an ordinary proceeding in a court of justice” and the Board of Education’s Answer and Counterclaim constitutes “pleadings” within the action for mandamus. Under the plain wording of the statute, then, the Protection of Public Expression Act does not apply to Ames’s mandamus action inasmuch as it is an action against a governmental unit involving the Board’s counterclaim.

{¶30} Ames’s argument presupposes that the counterclaim constitutes a separate or independent action. That position, however, is not supported in Ohio jurisprudence.

“Action” as Treated in the Rules of Civil Procedure

{¶31} We will first consider the Rules of Civil Procedure. The Rules provide that “[t]here shall be only one form of action, and it shall be known as a civil action.” Civ.R. 2. “A civil action is commenced by filing a complaint with the court.” Civ.R. 3(A). This

provision applies to Ames's Complaint in Mandamus but does not apply to the Board of Education's Answer and Counterclaim.

{¶32} The counterclaim is properly part of the Answer and constitutes a claim for relief. "The Civil Rules identify only seven types of filings as pleadings: a complaint, an answer, a reply to a counterclaim, an answer to a crossclaim, a third-party complaint, a third-party answer, and a reply to a third-party answer if ordered by the court." *Ohio Patrolmen's Benevolent Assn. v. Cleveland*, 2024-Ohio-2651, ¶ 26, citing Civ.R. 7(A). As treated by the Civil Rules, a counterclaim is part of an answer. "A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction." Civ.R. 13(A). The Board of Education's counterclaim in the present case arises out of the Complaint for Mandamus filed by Ames. See Answer and Counterclaim at 9-10 ("[t]he conduct of Ames in the instant case amounts to 'frivolous conduct'" and "vexatious conduct").

{¶33} Consistent with these Rules, the Supreme Court of Ohio has held: "All existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action." *Rettig Ents., Inc. v. Koehler*, 1994-Ohio-127, paragraph one of the syllabus. Compare *Michigan Millers Mut. Ins. Co. v. Christian*, 2003-Ohio-2455, ¶ 16 (3d Dist.) ("it is well established that counterclaims relating to the same transaction or occurrence underlying the original claim relate back to the commencement of the action").

{¶34} We further note that the conception of counterclaims as being part of the legal action initiated by the filing of a complaint is reflected in case law regarding final orders. Among the types of orders recognized as final in the Revised Code is “[a]n order that affects a substantial right in an action that in effect determines the action and prevents a judgment.” R.C. 2505.02(B)(1). Discussing this statute in a criminal context and without reference to R.C. 2307.01, the Supreme Court of Ohio remarked that “[t]he word ‘action’ has typically been understood to refer to the entire legal proceeding, regardless of how many claims or charges are included in the proceeding.” *State v. Craig*, 2020-Ohio-455, ¶ 13.

{¶35} The Civil Rules provide for an interlocutory appeal upon the finding of no just cause for delay in situations “[w]hen more than one claim for relief is presented in an action whether as a claim, counterclaim, cross-claim, or third-party claim.” Civ.R. 54(B). This Court has relied on the preceding provision to dismiss an appeal for lack of a final order where “one claim for relief still remain[ed] pending in the form of appellee’s counterclaim” and the “trial court did not make an express determination that there is no just reason for delay.” *Augusta v. Lemieux*, 2004-Ohio-5109, ¶ 4 (11th Dist.). The implication of these cases is that claims raised by way of counterclaim are part of the legal action in which they were raised.

Contrary Authority

{¶36} This Court is aware of authority that treats a counterclaim as an “action” as defined in R.C. 2307.01. In *Stults & Assoc., Inc. v. United Mobile Homes, Inc.*, 1998 WL 720471 (3d Dist.), the court of appeals held that a corporate defendant was prevented from raising a counterclaim under R.C. 1703.29(A) which “specifically prohibit[ed] an

unlicensed foreign corporation from maintaining any action in any court until the corporation obtains an Ohio license.” *Id.* at *5.

{¶37} Similarly, in *Settle-Muter Elec. Ltd. v. Intertech Security, LLC*, 2018-Ohio-4839 (10th Dist.), the court of appeals held that “the filing and prosecution of a counterclaim constitutes an action” inasmuch as the party raising the counterclaim “uses the process and procedures of the Ohio judicial system to seek a legal remedy from or against another party.” *Id.* at ¶ 14. In *Settle-Muter*, the court was construing R.C. 2711.02(B) which provides for the “stay [of] the trial of the action until the arbitration of [an] issue has been had.” The court concluded that the statute “only obligates a trial court to stay the litigation of non-arbitrable claims if those claims are encompassed in the action stayed.” *Id.* at ¶ 16. In other words, if arbitration is raised in a counterclaim, the statutory stay only applied to the counterclaim and not to the complaint or cross-claims as these constituted separate actions.

{¶38} We do not find the decisions in *Stults* or *Settle-Muter* precedential or controlling as they interpreted “action” in the context of statutes which are not relevant to the present case. Our focus is on the plain meaning of a “legal action against a governmental unit” as used in R.C. 2747.01(C)(1) and whether such action encompasses the Board of Education’s counterclaim. The present case, a single action despite multiple claims, is a legal action against a governmental unit. It is the legal action as a whole, not particular legal claims, that is excepted from the application of the Protection of Public Expression Act. Consistent with this understanding, the Civil Rules provide that an action is commenced by the filing of a complaint while a counterclaim is pled as part of an answer and case law treats the counterclaim as part of the original action.

{¶39} Whether the foregoing analysis necessarily precludes or contradicts the decisions of the Third and Tenth Districts regarding unlicensed corporations raising counterclaims and stays pending arbitration is not an issue for this Court to decide. In resolving the present appeal, it is enough to hold that the exception to the applicability of the Protection of Public Expression Act contained in R.C. 2747.01(C)(1) is written to apply broadly to a “legal action” which may encompass multiple claims rather than narrowly to particular claims.

{¶40} The first assignment of error is without merit.

Disposition of the Remaining Assignment of Error and Cross-Assignments of Error

{¶41} In his second assignment of error, Ames argues that the trial court erred by not holding the hearing required by R.C. 2747.04(A)(1). The requirement to hold a hearing only becomes operative if the provisions of the Protection of Public Expression Act apply. Under the first assignment of error, we affirmed the trial court’s judgment that the Act does not apply to the present action.

{¶42} Accordingly, the second assignment of error is without merit.

{¶43} Likewise, the Board of Education’s third, fifth, and sixth cross-assignments are premised on the Protection of Public Expression Act being generally applicable, but assert that Ames is unable to avail himself of its provisions. We find these arguments moot given our disposition of Ames’s first assignment of error.

{¶44} In the fourth cross-assignment of error, the Board of Education argues that, “[b]y filing his R.C. 121.22 action against the Board, Ames automatically triggered the R.C. 2747.01(C)(1) exemption to R.C. Chapter 2747 for the entire legal action.” Merit Brief of Appellee at 23.

{¶45} The fourth cross-assignment of error provides an independent and sufficient ground upon which to affirm the trial court’s judgment. The Board of Education is unquestionably a governmental unit. See R.C. 9.23(D)(1) (“[g]overnmental entity’ means a state agency or a political subdivision of the state”); R.C. 2744.01(F) (“[p]olitical subdivision’ ... means a ... school district”). By filing his Complaint in Mandamus against the Board, Ames initiated a “legal action against a governmental unit” within the plain meaning of R.C. 2747.01(C)(1). The Protection of Public Expression Act’s exemption therefore attached to the entire legal action at its inception — not merely to particular claims or pleadings filed within it. As we have concluded above, a legal action under R.C. 2307.01 is a single proceeding encompassing all pleadings, including counterclaims. It follows that the exemption written to apply to a “legal action against a governmental unit” applies with equal force to every claim and counterclaim within that action. Even if our analysis of the counterclaim-as-pleading question were in error, this independent basis for affirmance would remain intact. To the extent the fourth cross-assignment of error is premised on the Board of Education’s status as a governmental unit, it has merit.

{¶46} For the foregoing reasons, the judgment of the Geauga County Court of Common Pleas is affirmed. Costs to be taxed against the appellant.

EUGENE A. LUCCI, J.,

ROBERT J. PATTON, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the Opinion of this court, the fourth cross-assignment of error is with merit. The two assignments of error and second cross-assignment of error are without merit. The third, fifth, and sixth cross-assignments of error are moot. The order of this court is that the judgment of the Geauga County Court of Common Pleas is affirmed.

Appellee's Motion to Withdraw the First Cross-Assignment of Error is granted.

Costs to be taxed against appellant.

JUDGE SCOTT LYNCH

JUDGE EUGENE A. LUCCI,
concur

JUDGE ROBERT J. PATTON,
concur

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY
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A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.
