[Cite as *State ex rel. Ames v. Andover Village Council*, 2026-Ohio-4648.]

IN THE COURT OF APPEALS OF OHIO
ELEVENTH APPELLATE DISTRICT
ASHTABULA COUNTY

STATE OF OHIO ex rel. BRIAN M. AMES, Relator/Plaintiff- Appellant/Appellee, - vs - ANDOVER VILLAGE COUNCIL, Respondent/Defendant- Appellee/Appellant.	**CASE NOS. 2025-A-0060** **2026-A-0002** Civil Appeals from the Court of Common Pleas Trial Court No. 2025 CV 00173

OPINION AND JUDGMENT ENTRY

Decided: November 23, 2026
Judgment: Affirmed

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

Matthew John Markling, McGown & Markling Co., L.P.A., 1894 North Cleveland-Massillon Road, Akron, OH 44333 (For Respondent/Defendant-Appellee/Appellant.)

MATT LYNCH, P.J.

{¶1} Brian M. Ames ("Ames"), individually and in the name of the State of Ohio (ex. rel), appeals the judgment of the Ashtabula County Court of Common Pleas partially dismissing the complaint he filed against Andover Village Council ("the Village"). The Village appeals the trial court's judgment denying its Motion for a Sanctions Hearing and Motion for Leave to File Counterclaim. For the reasons that follow, both judgments are affirmed in their entirety.

{¶2} On February 25, 2025, Ames filed a "Verified Complaint in Mandamus for Preparation of Full and Accurate Meeting Minutes and Declaratory Judgment and Injunction for Enforcement of R.C. 121.22" against the Village. Ames captioned the complaint in the name of the State of Ohio ex rel. Brian M. Ames as Relator and in his individual capacity as Plaintiff. Ames alleged he had standing to bring this action under R.C. 121.22(I)(1).

{¶3} Count One of the Complaint alleged that on specified dates the Village had failed to state a specific approved matter or purpose for holding an executive session, in violation of R.C. 121.22(G).

{¶4} Count Two of the Complaint alleged that on specified dates the Village failed to record the "yeas" and "nays" in the meeting minutes, in violation of R.C. 705.15.

{¶5} Count Three of the Complaint alleged that on specified dates the Village failed to keep full and accurate meeting minutes, in violation of R.C. 121.22(C).

{¶6} Ames's prayer for relief requested the trial court do all of the following:

> (1) Issue a declaratory judgment finding that Andover Village had violated R.C. 121.22;
>
> (2) Issue an injunction against Andover Village for the violations set forth in Count One, enjoining Andover Village and its members to only hold an executive session for purposes listed in R.C. 121.22(G) and to state a specific approved matter or purpose in its motion to hold an executive session;
>
> (3) Issue an injunction against Andover Village for the violations set forth in Count Two, enjoining Andover Village and its members to enter into the minutes the "yeas" and "nays" of the votes taken on the passage of every ordinance and resolution;
>
> (4) Issue an injunction against Andover Village for the violations set forth in Count Three, enjoining Andover Village and its members to maintain full and accurate meeting minutes;

(5) Issue a writ of mandamus ordering Andover Village to prepare full and accurate meeting minutes and to record the "yeas" and "nays" of the votes taken on the passage of every ordinance and resolution;

(6) Order Andover Village to pay Ames a statutory penalty for each violation as mandated by R.C. 121.22(I)(2)(a);

(7) Award Ames court costs and reasonable attorney fees;

(8) Any other just and equitable relief.

{¶7} On March 18, 2025, Andover Village filed a "Partial Answer to the Verified Complaint."

{¶8} Also on March 18, 2025, Andover Village filed a "Partial Motion to Dismiss" under Civ.R. 12(B)(1) ("lack of jurisdiction over the subject matter") and 12(B)(6) ("failure to state a claim upon which relief can be granted"). Andover Village argued that all R.C. 121.22 claims brought in the name of the State of Ohio must be dismissed, citing our opinion in *State ex rel. Ames v. Geauga Cty. Bd. of Developmental Disabilities*, 2024-Ohio-5441 (11th Dist.); all R.C. 121.22 mandamus claims brought in Ames's individual capacity must be dismissed because R.C. 2731.04 mandates such petitions be made in the name of the State of Ohio; all R.C. 121.22 declaratory judgment claims must be dismissed because Ames did not allege any threatened current or future violations; and all R.C. 121.22 injunction claims must be dismissed because the Village did not violate R.C. 121.22.

{¶9} On March 24, 2025, Ames filed a memorandum in opposition to the partial motion to dismiss, explaining that his "Complaint joins two actions into a single pleading"; to wit: he brought the R.C. 121.22 claims in his own name under R.C. 121.22(I)(1), which

states that "[a]ny person may bring an action to enforce this section," and he brought the mandamus claims in the name of the State of Ohio.[1]

{¶10} Also on March 24, 2025, the Village filed a reply memorandum, doubling down on its assertion that all R.C. 121.22 claims must be dismissed for lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted.

{¶11} On June 5, 2025, the trial court granted the Village's Partial Motion to Dismiss. The court determined that Ames was proceeding solely as a Relator on behalf of the State of Ohio, not individually, and dismissed Ames's complaint with prejudice (except as to the claims with regard to two executive sessions purportedly held for personnel matters).

{¶12} On October 16, 2025, the parties jointly submitted a Partial Stipulated Dismissal with Prejudice, providing notice to the court of the following:

> Pursuant to Civ.R. 41(A)(1)(b), . . . all causes of action, claims for relief, and disputes not specifically dismissed in the June 5, 2025 judgment entry granting the partial motion to dismiss issued in the instant case are hereby dismissed **with prejudice** pursuant to a settlement agreement between the parties. Each party shall bear their own costs. This Honorable Court shall retain jurisdiction to enforce any applicable settlement agreement terms.
>
> Nothing in the partial stipulated dismissal **with prejudice** shall be considered a dismissal of any causes of action, claims for relief, and disputes specifically dismissed in the June 5, 2025 judgment entry granting the partial motion to dismiss issued in the instant case.

(Bold emphasis in original.)

1. This court has since held that a claim for mandamus relief in the name of the State of Ohio and an individual claim to enforce R.C. 121.22 may not be brought in a single case. *State ex rel. Ames v. Kinsman Township Bd. of Trustees*, 2026-Ohio-605, ¶ 9 (11th Dist.). In that appeal, we remanded the matter and ordered the trial court to sever the claims. Here, because none of the claims can survive the Civ.R. 12(B)(6) motion to dismiss, a remand to sever the claims is not the proper remedy.

{¶13} On October 24, 2025, the trial court entered a Judgment Entry granting the Partial Stipulated Dismissal with Prejudice, with the parties to bear their own costs.

{¶14} Ames filed a notice of appeal that same day, assigned case No. 2025-A-0060.

{¶15} In November 2025, while Ames's appeal was pending, the Village filed two motions in the trial court: on November 7, a Motion for Leave to File Counterclaim; on November 12, a Motion for a Sanctions Hearing.

{¶16} On November 24, 2025, the trial court's magistrate issued a decision denying both of the Village's motions, which the trial court independently reviewed and adopted that same day.

{¶17} On December 1, 2025, the Village filed objections to the magistrate's decision. This court subsequently granted the Village's motion to temporarily remand Ames's appeal for the trial court to rule on the pending objections.

{¶18} On December 30, 2025, the trial court issued an Omnibus Final Order, overruling the Village's objections and affirming its entry adopting the magistrate's decision denying the Motion for Leave to File Counterclaim and denying the Motion for a Sanctions Hearing.

{¶19} The matter was returned to this court. We granted Ames leave to amend his notice of appeal in case No. 2025-A-0060 to include an appeal from the Omnibus Final Order.

{¶20} The Village filed a notice of appeal from the Omnibus Final Order, assigned case No. 2026-A-0002. (The Village also filed a notice of cross-appeal in case No. 2025-A-0060, which it subsequently withdrew.)

{¶21} The appeals have been consolidated for final review and disposition. To review, Ames appeals the trial court's June 5, 2025 Dismissal Entry, granting the Village's Partial Motion to Dismiss (made final and appealable by the October 24, 2025 Dismissal Entry, granting the parties' stipulated motion to dismiss all remaining causes of action). The Village appeals the trial court's December 30, 2025 Omnibus Final Order, denying its Motion for a Sanctions Hearing and Motion for Leave to File Counterclaim.

AMES'S APPEAL (CASE NO. 2025-A-0060)

{¶22} Under case No. 2025-A-0060, Ames asserts three assignments of error:

> [1.] The trial court committed reversible error by granting the Council's Partial Motion to Dismiss.
>
> [2.] The trial court committed reversible error by sua sponte dismissing certain claims without notice.
>
> [3.] The trial court committed reversible error by failing to issue a writ of mandamus.

{¶23} We jointly consider Ames's assignments of error, which challenge the trial court's decision to grant the Village's Partial Motion to Dismiss.

{¶24} "An appellate court's standard of review for a trial court's actions regarding a motion to dismiss is de novo." *State ex rel. Malloy v. Girard*, 2007-Ohio-338, ¶ 8 (11th Dist.).

{¶25} In granting the motion, the trial court determined that each of Ames's counts failed to state a claim upon which relief can be granted. The court also determined that it "lacks subject matter jurisdiction" because the claims were not "brought by a real party in interest." This latter holding conflates two distinct legal concepts:

> "If a claim is asserted by a party who is not the real party in interest, then the party lacks standing to prosecute the action." *Kolkowski v. Ashtabula Area Teachers Assn.*, 2022-Ohio-3112, ¶ 28 (11th Dist.), citing *State ex rel.*

> *Jones v. Suster*, 84 Ohio St.3d 70, 77 (1998). "*A lack of standing challenges the capacity of a party to bring an action but does not challenge the subject matter jurisdiction of the court*." [*Id*.] "Accordingly, a motion to dismiss for lack of standing is properly brought pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted." [*Id*.], citing *Brown v. Columbus City Schools Bd. of Edn.*, 2009-Ohio-3230, ¶ 4 (10th Dist.).

(Emphasis added.) *Ames*, 2024-Ohio-5441, at ¶ 7 (11th Dist.). Dismissal for lack of subject matter jurisdiction, on the other hand, is appropriate only when no cause of action cognizable by the forum has been raised in the complaint. *See RBT Strategies, LLC v. Huntington Bancshares Inc.*, 2025-Ohio-145, ¶ 38 (11th Dist.).

{¶26} Dismissal under Civ.R. 12(B)(6) for "failure to state a claim upon which relief can be granted" is appropriate only if it appears "beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery." *O'Brien v. Univ. Community Tenants Union, Inc.*, 42 Ohio St.2d 242 (1975), syllabus. The court generally cannot rely on evidence outside the complaint when ruling on such a motion. *State ex rel. Fuqua v. Alexander*, 79 Ohio St.3d 206, 207 (1997). In construing the complaint, a court must presume all factual allegations are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.*, 40 Ohio St.3d 190, 192 (1988). However, a court should not accept as true any unsupported legal conclusions in the complaint. *See id.* at 193.

{¶27} With respect to dismissal for failure to prosecute a claim in the name of the real party in interest, Civ.R. 17(A) provides:

> Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his name as such representative without joining with him the party for whose benefit the action is brought. *When a statute of this state so provides, an action for the use or benefit of another shall be brought in the name of this state.* No action

> shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest. Such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(Emphasis added.)

{¶28} Ames alleged he had standing to bring this action under R.C. 121.22(I)(1). R.C. 121.22(I)(1) provides:

> Any person may bring an action to enforce this section. An action under division (I)(1) of this section shall be brought within two years after the date of the alleged violation or threatened violation. Upon proof of a violation or threatened violation of this section in an action brought by any person, the court of common pleas shall issue an injunction to compel the members of the public body to comply with its provisions.

{¶29} Ohio's Open Meetings Act ("OMA"), set forth in R.C. 121.22, "shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A). "One of the strengths of American government is the right of the public to know and understand the actions of their elected representatives. This includes not merely the right to know a government body's final decision on a matter, but the ways and means by which those decisions were reached." *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416, 419 (1996). "The intent of the OMA is to prevent public bodies from engaging in secret deliberations on public issues with no accountability to the public." *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2019-Ohio-3730, ¶ 45 (11th Dist.), citing *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540, 544 (1996). Courts must avoid construing a statute in a way that would

"'result in circumventing the evident purpose of the enactment.'" *Cincinnati Post* at 543, quoting *Daiquiri Club, Inc. v. Peck*, 159 Ohio St. 52, 55 (1953).

{¶30} Here, the trial court initially determined that Ames was proceeding as a relator on behalf of the State of Ohio, and not individually. On appeal, Ames claims that the trial court "abused its discretion" by granting the Partial Motion to Dismiss "based on how the Complaint is captioned." Ames captioned his complaint, "State of Ohio ex rel. Brian M. Ames Relator" and "Brian M. Ames Plaintiff." However, it is apparent from the trial court's entry that it determined Ames was proceeding solely as a relator on behalf of the State of Ohio based on the substance of the complaint, not on the caption. Although Ames contends there is nothing to support this holding, we disagree.

{¶31} Even under Ohio's liberal "notice pleading" standard, *see* Civ.R. 8, a purported plaintiff cannot survive a Civ.R. 12(B)(6) motion if the complaint utterly fails to plead any causes of action or allegations on the plaintiff's behalf. It is the substance of the pleading, not the caption, that determines its operative effect. *See Parmertor v. Chardon Local Schools*, 2016-Ohio-761, ¶ 31 (11th Dist.); *accord Wattley v. Rinaldi*, 2025-Ohio-5538, ¶ 44 (5th Dist.), citing *Funk v. Rent-All Mart, Inc.*, 91 Ohio St.3d 78, 80 (2001).

{¶32} Reviewing the allegations in the complaint, we find it appears beyond doubt that Ames, in his individual capacity as plaintiff, cannot survive the Civ.R. 12(B)(6) motion. While Ames apparently took great pains with fashioning his caption, he included no allegations within the complaint that relate to his individual capacity as plaintiff. Each count of the complaint begins with the statement, "*Relator* incorporates the above paragraphs as if fully rewritten herein"; in the prayer for relief, only "*Relator* Brian M. Ames

prays for judgment"; and the complaint is signed by "Brian M. Ames *Relator* pro se." (Emphasis added.) Accordingly, we uphold the trial court's dismissal of the complaint as it pertains to "Brian M. Ames Plaintiff."

{¶33} We further uphold the trial court's dismissal of the claims brought by Ames in the name of the State of Ohio that do not sound in mandamus. "Ohio courts have established and confirmed that an action in mandamus is a proper procedure for compelling a public body to comply with R.C. 121.22." *Ames*, 2026-Ohio-605, at ¶ 39 (11th Dist.); *see* R.C. 2731.04 ("Application for the writ of mandamus must be by petition, in the name of the state on the relation of the person applying, and verified by affidavit."). However, a complaint "seeking declaratory and injunctive relief to enforce R.C. 121.22 cannot be brought on behalf of the State of Ohio because no statute provides for that." (Emphasis deleted.) *Ames*, 2026-Ohio-605, at ¶ 6. Thus, Ames's complaint for declaratory and injunctive relief brought in the name of the State of Ohio does not comply with Civ.R. 17(A) and was properly dismissed. *See id*. at ¶ 38, citing *Ames*, 2024-Ohio-5441, at ¶ 27 (11th Dist.) ("Nothing in R.C. 121.22 provides that an action to enforce its provisions be brought in the name of the State of Ohio.").

{¶34} "The purpose of mandamus is to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station." *State ex rel. Taylor v. Glasser*, 50 Ohio St.2d 165, 166 (1977). In order to be entitled to a writ of mandamus, the relator must establish the following by clear and convincing evidence: (1) a clear legal right to the requested relief, (2) a clear legal duty on the part of the respondent to provide it, and (3) the lack of an adequate remedy in the ordinary course

of the law. *State ex rel. Ames v. Mahoning Cty. Bd. of Elections*, 2023-Ohio-4747, ¶ 50, citing *State ex rel. Waters v. Spaeth*, 2012-Ohio-69, ¶ 6, 13.

{¶35} Ames attached to his complaint an "Affidavit of Verification" and copies of minutes from multiple meetings held by the Village throughout 2023 and 2024. In his prayer for relief, the only mandamus relief Ames requested is for the trial court to "[i]ssue a writ of mandamus ordering the Board to prepare full and accurate minutes of its meetings and to correct its minutes to record the 'yeas' and 'nays' of the votes taken on the passage of every ordinance and resolution." This mandamus request appears to relate to Count Two of his complaint, wherein Ames alleged the following:

> 58. R.C. 705.15 requires that on the passage of every ordinance or resolution the vote shall be taken by 'yeas' and 'nays' and entered upon the journal.
>
> 59. - 80. The minutes for [each meeting] do not record the 'yeas' and 'nays' for the ordinances and resolutions passed, notwithstanding the requirements of R.C. 705.15.
>
> 81. The Board has violated R.C. 121.22(C) by its failure to keep full and accurate minutes of the Meetings.

{¶36} There is no dispute that the meeting minutes do not include a record of the "yeas" and "nays" for the ordinances and resolutions passed. However, neither R.C. 121.22(C) nor R.C. 705.15 impose a clear legal duty on the Village to include such a record in the meeting minutes.

{¶37} R.C. 121.22(C) does not impose a general requirement that meeting minutes record individual yea-and-nay votes for all public body actions. R.C. 121.22(C) provides:

> All meetings of any public body are declared to be public meetings open to the public at all times. A member of a public body shall be present in person at a meeting open to the public to be considered present or to

> vote at the meeting and for purposes of determining whether a quorum is present at the meeting.
>
> The minutes of a regular or special meeting of any public body shall be promptly prepared, filed, and maintained and shall be open to public inspection. The minutes need only reflect the general subject matter of discussions in executive sessions authorized under division (G) or (J) of this section.

{¶38} R.C. 705.15 imposes a requirement to enter yea-and-nay votes upon the official journal of proceedings of the legislative authority, but not in the meeting minutes. R.C. 705.15 provides, in relevant part:

> A majority of all members of the legislative authority of a municipal corporation constitutes a quorum, but a smaller number may adjourn from day to day and compel the attendance of absent members. The affirmative vote of a majority of the members of the legislative authority is necessary to adopt any motion, ordinance, or resolution, and on the passage of every ordinance or resolution the vote shall be taken by "yeas" and "nays" and entered upon the journal.

{¶39} The meeting minutes required by R.C. 121.22 and the official journal of proceedings mandated by R.C. 731.45 are legally distinct records arising from separate statutory duties. Accordingly, we conclude that Ames's complaint fails to state a claim upon which mandamus relief can be granted.

{¶40} Of final note, we do agree with Ames that the trial court's application of a presumption of regularity was misplaced in this context. The trial court stated:

> In reviewing and scrutinizing the claims made against Andover, this Court must apply a presumption of regularity to Andover's actions: "in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner." *State ex rel. Shafer v. Ohio Tpk. Commn.*, 159 Ohio St. 581 (1953). Accordingly, in reviewing the various claims, this Court starts from the presumption that Andover acted in good faith and exercised sound judgment.

Shafer involved a case that was decided on the merits; following extended hearings, judgment was entered granting the writ of mandamus. The instant case involved a Civ.R. 12(B)(6) dismissal, not a decision on the merits. Thus, the trial court was required to presume that Ames's factual allegations were true, to the extent not contradicted by the meeting minutes he attached to the complaint. Ames was not yet required to provide evidence to prove his claims, he was only required to plead or show facts that sufficiently alleged a statutory violation.

{¶41} Notwithstanding, upon de novo review, we conclude the trial court did not commit reversible error by granting the Partial Motion to Dismiss.

{¶42} Ames's assignments of error are without merit.

{¶43} Andover Village asserts two cross-assignments of error to Ames's appeal:

> [1.] Ames is held to the same standard as represented litigants in R.C. 121.22 actions.
>
> [2.] The instant appellate case must be dismissed for lack of a final, appealable order.

{¶44} R.C. 2505.22 provides, in part: "In connection with an appeal of a final order, judgment, or decree of a court, assignments of error may be filed by an appellee who does not appeal, which assignments shall be passed upon by a reviewing court before the final order, judgment, or decree is reversed in whole or in part." *See also* Eleventh Dist. Loc.R. 16(B)(4)(b) ("If appellee is defending a judgment or order appealed by an appellant on a ground other than that relied on by the trial court, but does not wish to change the judgment or order, the basis for the alternative defense shall be set forth separately in a cross-assignment of error in the Appellee's Brief.").

{¶45} The Ohio Supreme Court, construing R.C. 2505.22, held: "Assignments of error of an appellee who has not appealed from a judgment may be considered by a reviewing court only when necessary to prevent a reversal of the judgment under review." *Parton v. Weilnau*, 169 Ohio St. 145 (1959), paragraph seven of the syllabus. "[A]n assignment of error by an appellee, where such appellee has not filed any notice of appeal from the judgment of the lower court, may be used by the appellee as a shield to protect the judgment of the lower court but may not be used by the appellee as a sword to destroy or modify that judgment." *Id*. at 171. *Accord Duracote Corp. v. Goodyear Tire & Rubber Co.*, 2 Ohio St.3d 160, 163 (1983).

{¶46} In its first cross-assignment of error, the Village claims the trial court erred in considering Ames's pro se status when it granted the Partial Motion to Dismiss, denied the Motion for a Sanctions Hearing, and issued its Omnibus Final Order. In its second cross-assignment of error, the Village contends that the trial court did not have subject matter jurisdiction to review Ames's R.C. 121.22 claims, therefore the judgment dismissing those claims is void, and an appeal cannot be taken from a void judgment.

{¶47} Were we to uphold the Village's cross-assignments of error, we would have to either reverse or vacate the trial court and remand for further proceedings. Thus, the Village has attempted to use its cross-assignments of error as a sword, not a shield, and we cannot review them as presented. Moreover, the Village raised the same jurisdictional arguments in its motion to dismiss Ames's appeal, which we overruled on the basis that the trial court has the authority to determine its own jurisdiction, *State ex rel. Tubbs Jones v. Suster*, 84 Ohio St.3d 70, 74 (1998), and that determination may be challenged by way

of appeal, *State ex rel. Willacy v. Smith*, 78 Ohio St.3d 47, 51 (1997). The Village filed a cross-appeal in this case but later withdrew it.

{¶48} Accordingly, the Village's cross-assignments of error are not well taken.

ANDOVER VILLAGE'S APPEAL (CASE NO. 2026-A-0002)

{¶49} Under case No. 2026-A-0002, the Village assigns three assignments of error for our review:

> [1.] The Trial Court erred in substantially relying upon obiter dicta in denying both the motion for sanctions and motion for leave to file a counterclaim and refusing to rule on the merits of the same.
>
> [2.] The Trial Court erred in denying the motion for sanctions and refusing to rule on the merits of the same.
>
> [3.] The Trial Court erred in denying the motion for leave to file a counterclaim and refusing to rule on the merits of the same.

{¶50} We first dispel the notion, incessantly raised by the Village, that the trial court's Omnibus Final Order is not a final appealable order. Specifically, we conclude the order is final and appealable under R.C. 2505.02(B)(2) ("[a]n order that affects a substantial right in an action made . . . upon a summary application in an action after judgment"), and because no parties or claims remained pending before the trial court, the inclusion of Civ.R. 54(B) language was not required.

{¶51} The Village, in its first assignment of error, contends that the trial court "violated all fundamental principles of fairness and justice by refusing to decide the motion for sanctions and motion for leave to file a counterclaim on their merits and the rule of law" and instead "prematurely imposed erroneous declarations and advice upon potential controversies by sua sponte engaging in its own investigation and issuing a 23-page decision—the totality of which is riddled with incidental and collateral remarks, reflections,

comments, and utterances amounting to pure immaterial, impertinent, and scandalous obiter dicta." We disagree.

{¶52} "Obiter dictum" is defined in *Black's Law Dictionary* as "[a] judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive)." *See also State ex rel. Gordon v. Barthalow*, 150 Ohio St. 499, 505-506 (1948), quoting *Webster's New Internatl. Dictionary* ("defin[ing] obiter dictum as 'an incidental and collateral opinion uttered by a judge, and therefore (as not material to his decision or judgment) not binding. . . . Hence, any incidental remark, reflection, comment or the like.'").

{¶53} The Village does not identify which portions of the trial court's order it believes are obiter dicta. Nevertheless, the presence of obiter dicta does not warrant reversal where the correct legal standard was applied. The Village cites *Anderson v. WBNS-TV, Inc.*, 2019-Ohio-5196, in support of its assignment of error. However, the reversal issued by the Ohio Supreme Court in *Anderson* was not grounded in any dicta contained in the trial court's opinion but in the appellate court's failure to apply the correct legal standard on review. *See id*. at ¶ 13-14. As we explain infra, the trial court properly considered and analyzed the facts and issues presented in this matter under the correct legal standards. Thus, the inclusion of obiter dicta, if any, was harmless.

{¶54} Accordingly, the Village's first assignment of error is not well taken.

{¶55} In its second assignment of error, the Village contends the trial court erred in denying its "motion for sanctions" and refusing to rule on the merits of the same.

{¶56} The motion at issue, filed by the Village on November 12, 2025, was captioned, "Motion for a Sanctions Hearing." The trial court's magistrate denied the motion in a decision filed November 24, 2025, for the following reasons:

> A motion for a sanctions hearing does not exist under the Civil Rules of Procedure. A hearing is triggered under the Civil Rules by an appropriate motion authorized under the Civil Rules, or is otherwise expressly authorized by statute. Neither a Civil Rule 11 motion nor a motion pursuant to R.C. 2323.51 is pending before the Court, so as to properly trigger a hearing. This Court has no authority to proceed with a sanctions hearing at some unknown future date, post appeal, on an unknown rule or statutory standard, especially in an evidentiary, context, and argument void. Moreover, the simple argument, without more, that the plaintiff proceeds pro se in other cases does not create a basis for a sanctions hearing.
>
> As explained in the decision, the vexatious litigators statute is invoked by asserting a claim and not by motion. This is also true as to the now asserted R.C. 121.22(I)(1) claim. It is additionally unclear to this Court as to whether a sanctions hearing at some indeterminate date incorporates either statute.

{¶57} The trial court adopted the magistrate's decision that same date, following which the Village filed objections. The court overruled these objections in its Omnibus Final Order.

{¶58} "Except for a claim of plain error, a party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law . . ., unless the party has objected to that finding or conclusion as required by Civ.R. 53(D)(3)(b)." Civ.R. 53(D)(3)(b)(iv).

{¶59} The Village presents eight issues for review under this assignment of error. Four of these issues were not raised in the objections to the magistrate's decision as required by Civ.R. 53(D)(3)(b), and the Village does not claim plain error on appeal. Thus,

these particular arguments have been forfeited.[2] *See State ex rel. Ames v. Geauga Cty. Bd. of Rev.*, 2023-Ohio-1247, ¶ 39 (11th Dist.), quoting *Cable Busters, LLC v. Mosley*, 2020-Ohio-3442, ¶ 8 (1st Dist.) ("'Where the appellant in a civil case does not properly invoke the plain-error doctrine, it cannot meet its burden on appeal and [a reviewing court] will not sua sponte undertake a plain-error analysis on its behalf.'").

{¶60} The remaining issues, one of which is the final appealable order argument addressed above, are reviewable on appeal. They include the following, as presented by the Village: (1) whether a motion for sanctions pursuant to Civ.R. 11 may be filed within a reasonable time of a final judgment; (2) whether a court is required to conduct a sanctions hearing prior to determining whether alleged conduct is frivolous upon a timely motion pursuant to Civ.R. 11, R.C. 2323.51, and/or R.C. 121.22(I)(2)(b); (3) whether R.C. 121.22(I)(2)(b) requires a court to determine whether the R.C. 121.22 action was frivolous as defined in R.C. 2323.51(A) if the court declines an R.C. 121.22(I)(1) enforcement action.

{¶61} "Although Civ.R. 11 does not articulate a time limit for filing a sanctions motion, courts have held that a Civ.R. 11 motion must be filed within a reasonable time after the final judgment." *State ex rel. DiFranco v. S. Euclid*, 2015-Ohio-4915, ¶ 18, citing *In re Krueger,* 2014-Ohio-3718, ¶ 10 (8th Dist.). The Village claims it filed four separate Civ.R. 11 motions within reasonable times, but this is not an accurate portrayal of the record.

2. The forfeited issues are as follows: (1) whether justice requires treating Civ.R. 11, R.C. 2323.51, and R.C. 121.22(I)(2)(b) defenses pleaded in an answer as counterclaims pursuant to Civ.R. 8(C); (2) whether requests for sanctions may be brought by counterclaims; (3) whether the contents of a motion control how a court must treat the motion rather than the title or caption of the motion; (4) whether R.C. 2323.51(B)(1) exempts a party from having to seek a frivolous conduct determination within 30 days of a final judgment when such relief is sought pursuant to R.C. 121.22(I)(2)(b).

{¶62} The first "motion" the Village references is not a motion, but its "Partial Answer to the Verified Complaint," in which it lists as an "additional defense" that "[t]he Village is entitled to attorney fees and costs pursuant to Civ.R. 11 . . . ." Two other motions referenced by the Village were filed after the instant appeal was perfected, on January 11 and February 20, 2026. The former motion was addressed by the trial court in a ruling that the Village has separately appealed in case No. 2026-A-0020. The latter motion was granted by the trial court in a ruling that Ames appealed but failed to prosecute in case No. 2026-A-0021.

{¶63} The final motion referenced by the Village is its "Motion for a Sanctions Hearing," the denial of which is before us in this appeal. However, the trial court made no ruling as to whether this motion was filed within a reasonable time. Rather, the trial court found it was not a proper motion for sanctions. Although the Village contends that the trial court erred by "refus[ing] to look beyond the title and caption of the motion for sanctions to consider the substance of the motion," it did not object to the magistrate's decision on this basis, thereby forfeiting the argument on appeal. Curiously, the Village's objections instead refer to a "motion for sanctions" purportedly filed on November 17, 2025, which would have been five days after it filed the "Motion for a Sanctions Hearing." The certified record is devoid of any "motion for sanctions" filed on or about November 17, 2025. Accordingly, we find no basis to conclude that the trial court refused to consider a motion for sanctions that was filed within a reasonable time.

{¶64} Moreover, because the trial court did not award sanctions in the face of the motion that was filed or when it dismissed Ames's R.C. 121.22 claims, the court was not required to conduct a sanctions hearing. None of the relevant statutes, civil rules, or case

law require a hearing unless the trial court awards or intends to award attorney fees to sanction a party's frivolous conduct. *See, e.g., Rondini v. Seman*, 2002-Ohio-6590, ¶ 7-8 (11th Dist.), citing Civ.R. 11 and R.C. 2323.51(A)(2) (finding it an abuse of discretion to impose sanctions without first conducting an evidentiary hearing); *State ex rel. Ames v. Portage Cty. Bd. of Commrs.*, 2019-Ohio-3237, ¶ 30 (11th Dist.), citing R.C. 121.22(I)(2)(b) (if the trial court denies injunctive relief under R.C. 121.22(I)(1) and "determines at that time that the bringing of the action was frivolous conduct" as defined in R.C. 2323.51(A), "the court shall award to the public body all court costs and reasonable attorney's fees," but only after "alert[ing] the plaintiff of its intention to hold a hearing on the frivolous conduct issue to preserve his or right to due process").

{¶65} For these reasons, the Village has not demonstrated that the trial court erred in denying the "Motion for a Sanctions Hearing."

{¶66} The second assignment of error is without merit.

{¶67} Next, in its third assignment of error, the Village contends the trial court erred in denying its November 7, 2025 "Motion for Leave to File Counterclaim" and refusing to rule on the merits of the same.

{¶68} "Whether to grant a party leave to file a counterclaim is solely within the discretion of the trial court and will not be disturbed on appeal unless the ruling was an abuse of discretion." *First Natl. Bank of PA v. Nader*, 2017-Ohio-1482, ¶ 61 (9th Dist.) An abuse of discretion implies that the court's attitude was unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶69} The entirety of the Village's motion, filed post-judgment and post-appeal, states as follows:

> Now comes [the Village] for leave to file a counterclaim against [Ames] on or before November 24, 2025, (1) pursuant to Civ.R. 11, R.C. 2323.51, and applicable laws, due to the frivolous conduct of Ames relating to the June 5, 2025 journal entry of this Honorable Court, which Ames appealed on October 24, 2025, and (2) pursuant to R.C. 2323.52 and applicable laws, due to the vexatious conduct of Ames given that the October 24, 2025 termination of the instant civil action triggers the 30 day and one year deadlines in R.C. 2323.51 and R.C. 2323.52, respectively.

{¶70} The trial court's magistrate denied the motion in a decision filed November 24, 2025, for the following reasons:

> The defendant's motion provides little information or context to this Court as to how to proceed. Apparently, the defendant is moving pursuant to either or both Civil Rule 13(E) and/or Civil Rule 15(E) to assert after acquired claims as may be permissible under either rule.[3] A proposed counterclaim is not attached to the motion, and neither Civil Rule 13(E) nor Civil Rule 15(E) are specifically cited or asserted. The motion for leave to file the counterclaim only vaguely alludes to ". . . frivolous conduct of Ames relating to the June 5, 2025 journal entry . . ." and invokes a statute and a civil rule only operable and enforceable through motion. A Civil Rule 13(E) motion is akin to a Civil Rule 15(E) motion. As such, it is addressed to the discretion of this Court. [*Baldwin's Oh. Prac. Civ. Proc.* 15:16]
>
> Defendant's nebulous motion sans proposed pleading only compounds the confusion over the context in which this motion is brought. It is not clear from the face of the motion whether the purported claims actually accrued after the commencement of this action or were part of a pattern of prior conduct. This Court dismissed some of the claims in June 2025, this Court further notes that there is at least one reference to a settlement, there is a stipulation of dismissal of the balance of the pending claims, and an appeal to the Eleventh District Court of Appeals in October 2025. This Court cannot divine what has or has not transpired between Ames and Andover Village, and cannot responsibly decide the present motion on a relatively empty record, a lack of a proposed pleading, and a near dearth of explanation from the moving party.

3. Under Civ.R. 13(E), "A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the court, be presented as a counterclaim by supplemental pleadings." Civ.R. 15(E) provides, "Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statement of a claim for relief or defense. If the court deems it advisable that the adverse party plead to the supplemental pleading, it shall so order, specifying the time therefor."

> Most of what is sought by way of a proposed counterclaim are not causes of action but are actually motions to be brought to a Court's attention. Civil Rule 11 is not a cause of action, but is enforced by motion. *Mitchell v. Whitaker*, 33 Ohio App.3d 170 (8th Dist. 1986). An award of sanctions and attorney's fees under R.C. 2323.51 is triggered by motion. . . . R.C. 2323.51(B)(1). . . .
>
> Neither R.C. 2323.51 nor Civil Rule 11 are properly includable in a counterclaim, and Andover Village offers no argument or authority to the contrary, and this Court is aware of none.
>
> The docket discloses that Ames filed an appeal to the Eleventh District Court of Appeals on October 24, 2025. "An action taken by a trial court after it loses jurisdiction as a result of the filing of an appeal" is "void." *L. Bryan Carr Co., LPA v. LaForge*, 2025-Ohio-889 (11th Dist.). This Court ". . . loses jurisdiction by virtue of a perfected appeal, at least to the extent that the trial court's exercise of jurisdiction would be inconsistent with the authority of the appellate court to review and affirm, reverse, vacate, or modify the judgment of the court below. Generally, *OH. App. Prac.* 1:19. "In other words, the trial court may not exercise its retained jurisdiction in a manner that interferes with the appellate jurisdiction of the reviewing court or does not function in aid of the appeal." *Id*., citations and footnotes omitted.
>
> The defendant does not address its final proposed claim, an action under the vexatious litigators statute, R.C. 2323.52, in the context of the pending appeal. The defendant essentially proposes that the Court continue its jurisdiction to entertain a vexatious litigators claim, without explaining how or why the entertainment of such an action would not interfere with appellate jurisdiction and the general divestiture of jurisdiction of this Court. Without more information, and without a proposed pleading, this Court will exercise its discretion and disallow a counterclaim for claims under the vexatious litigators statute. This does not leave the defendant without a remedy, as the defendant can proceed with a separate action in this Court, another court in which Mr. Ames allegedly engaged in infirm conduct, or in the Court of Appeals.
>
> Accordingly, it is the order of the Magistrate that the motion for leave to file a counterclaim be denied.

{¶71} The trial court adopted the magistrate's decision that same date, following which the Village filed objections. The court overruled these objections in its Omnibus Final Order.

{¶72} The Village presents two issues for review, one of which has been forfeited because it was not objected to as required by Civ.R. 53(D)(3)(b), and Andover Village does not claim plain error on appeal, *see Ames*, 2023-Ohio-1247, at ¶ 39 (11th Dist.).[4]

{¶73} The remaining issue is whether it is error for a court to deny a motion for leave to file a counterclaim for not attaching a proposed counterclaim when neither the civil nor local rules require such attachments. However, the trial court's denial of the Village's motion was much more nuanced than is reflected in this statement of the issue, and we discern no abuse of discretion with said ruling. As recognized by the trial court, Civ.R. 11 and R.C. 2323.51 are enforced by motion, not causes of action. More importantly, "[o]nce a case has been appealed, the trial court loses jurisdiction except to take action in aid of the appeal. The trial court retains jurisdiction over issues not inconsistent with the appellate court's jurisdiction to reverse, modify, or affirm the judgment appealed from." (Internal citations omitted.) *In re S.J.*, 2005-Ohio-3215, ¶ 9. Granting the Village leave to file a permissive counterclaim after both a final judgment and a notice of appeal would have been inconsistent with this court's jurisdiction to review the judgment appealed from. Accordingly, the trial court did not err in denying the "Motion for Leave to File Counterclaim."

{¶74} The third assignment of error is without merit.

{¶75} Finally, Ames has asserted a cross-assignment of error to the Village's appeal: "Did the trial court err by chastising the Council and Markling for joining other public entities in exercising each public entity's respective rights?" Ames contends the trial court did *not* err by chastising the Village and its attorney for joining other public

4. The forfeited issue is whether a court may grant a defendant leave to file a counterclaim by supplemental pleading prior to a final order pursuant to Civ.R. 13(E).

entities in exercising each public entity's respective rights, as there was neither joinder nor chastisement. We decline to consider this cross-assignment of error because (1) Ames appealed this judgment by amending his notice of appeal in case No. 2025-A-0060 (although he did not assign any errors pertaining thereto), and (2) we are not reversing the judgment under review. *See Parton*, 169 Ohio St. 145 at paragraph seven of the syllabus ("Assignments of error of an appellee who has not appealed from a judgment may be considered by a reviewing court only when necessary to prevent a reversal of the judgment under review.").

{¶76} Ames's cross-assignment of error is not well taken.

{¶77} The judgments of the Ashtabula County Court of Common Pleas in appellate case Nos. 2025-A-0060 and 2026-A-0002 are hereby affirmed.

JOHN J. EKLUND, J.,

SCOTT LYNCH, J.,

concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this court, it is the judgment and order of this court that the judgments of the Ashtabula County Court of Common Pleas are affirmed.

All pending motions, including the parties' motions for sanctions, are overruled.

Costs for case No. 2025-A-0060 to be taxed against Brian M. Ames.

Costs for case No. 2026-A-0002 to be taxed against Andover Village Council.

PRESIDING JUDGE MATT LYNCH

JUDGE JOHN J. EKLUND,
concurs

JUDGE SCOTT LYNCH,
concurs

THIS DOCUMENT CONSTITUTES A FINAL JUDGMENT ENTRY

A certified copy of this opinion and judgment entry shall constitute the mandate pursuant to Rule 27 of the Ohio Rules of Appellate Procedure.