

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

ESTATE OF JUDY A. MARSH, DECEASED,

Plaintiff-Appellant,

v.

CANFIELD ACRES LLC DBA WINDSOR HOUSE AT CANFIELD ET AL.,

Defendants-Appellees.

OPINION AND JUDGMENT ENTRY
Case No. 26 MA 0020

Civil Appeal from the
Court of Common Pleas of Mahoning County, Ohio
Case No. 2025 CV 03175

BEFORE:

Cheryl L. Waite, Carol Ann Robb, Katelyn Dickey, Judges.

JUDGMENT:

Affirmed.
Stay Lifted.

Atty. Michael A. Hill, Atty. Matthew A. Mooney, Atty. Molly B. Morris, Michael Hill Trial
Law, for Plaintiff-Appellant

Atty. Emily K. Anglewicz, Atty. Megan M. Millich, Atty. Justin A. Markota, Roetzel &
Andress, LPA, for Defendants-Appellees

Dated: October 22, 2026

WAITE, P.J.

{¶1} Appellant Estate of Judy A. Marsh, through estate representative Christine Oliver, appeals a February 23, 2026 judgment entry of the Mahoning County Court of Common Pleas granting a motion for a gag order filed by Appellees. In the spirit of the gag order, we will refer to Appellees simply as the “Nursing Home.” Appellant, who is a political candidate seeking election to the position of Mahoning County Commissioner, argues that the gag order violates both her First Amendment rights, particularly as a political candidate, and the rights of her counsel. For the reasons provided, Appellant’s arguments are without merit and the judgment of the trial court is affirmed.

Factual and Procedural History

{¶2} The basis for Appellant’s complaint is not directly at issue, here, as the appeal stems not from the underlying conduct but from a gag order that the trial court entered in the case. However, some facts from the underlying action are relevant and are discussed within the parties’ briefs. Thus, a general and limited rendition of those facts will be provided. However, we note that the underlying lawsuit is still in the pretrial stages, hence the facts largely remain in dispute.

Underlying Conduct

{¶3} Judy Marsh was the estate representative’s mother. Ms. Marsh suffered symptoms of breathing/lung issues and was admitted into St. Elizabeth’s Hospital, where she was diagnosed with pneumonia. She remained at the hospital for almost two weeks before her healthcare providers elected to send her to a period of in-house rehabilitation at the Nursing Home. Apparently, Ms. Marsh was in a weakened state before her

pneumonia symptoms began due to prior existing medical conditions, hence an in-house rehabilitation stay was deemed necessary before she could return to her home.

{¶4} Shortly after entering the Nursing Home, Ms. Marsh returned to the hospital. While no wound pressures were observed, her healthcare providers noted some redness to her buttocks. Upon her release, the Nursing Home implemented a care plan with instructions to turn and reposition her in her bed to avoid wound pressure. After several days at the Nursing Home, she once again returned to the hospital, where slight wound pressures were observed.

{¶5} Ms. Marsh was transferred back and forth between the Nursing Home and hospital several times from January of 2025 until her death on April 6, 2025. During her time at the Nursing Home, it is alleged that healthcare providers failed to abide by the turning and repositioning plan, failed to treat her wounds as ordered by the hospital, and left Ms. Marsh in soiled diapers and linens when she became both bladder and bowel incontinent. At the time of her death, Ms. Marsh's pressure wounds were significant and were noted on her death certificate as a cause of death.

Complaint

{¶6} On December 15, 2025, Appellant Christine Oliver ("Appellant"), Ms. Marsh's daughter, filed a complaint in the Mahoning County Court of Common Pleas as executor of her mother's estate. In her complaint, she alleged the following: medical negligence, nursing home resident rights violations, wrongful death, civil conspiracy, and fraud. On February 2, 2026, Appellees collectively filed an answer denying the allegations.

Statements

{¶7} The day before announcing her candidacy for Mahoning County Commissioner, Appellant held a press conference for the news media, including national news media, about the lawsuit. At least three of the national outlets filed articles about Appellant's suit. Quotes within the national articles were attributed to Appellant's counsel. It is unclear whether Appellant herself spoke to the media outlets.

{¶8} The first article, published by US Weekly, contained the headline "Nursing Home Allegedly Lied About Woman's 'Worsening' Pressure Ulcer Before She Died." The second article, published by Law & Crime, had the headline "Nursing home lied about woman's pressure ulcer after telling 75-year-old to turn herself and leaving her in soiled diapers until she died, suit says." The third article, published by Business Wire, included the headline "Michael Hill Files Wrongful Death Lawsuit Against Nursing Home at Canfield."

{¶9} Each of these articles contained a quote attributed to Appellant's counsel stating, "[t]his case reflects an avoidable and incomprehensible breakdown in basic care. Our complaint alleged that a profit driven business model led to chronic understaffing, and that Judy Marsh paid for the corporate decision with her life." (Appellant's Brf., p. 7)

Gag Order

{¶10} Based on the press conference and the information given in these articles, Appellees filed a motion for a gag order seeking to prevent Appellant from speaking publicly about the lawsuit during its pendency. Appellees filed this motion on the day they filed their answer, apparently in an attempt to stop further public dissemination of

information prior to the exchange of discovery. Appellant opposed the motion on First Amendment grounds.

{¶11} On February 23, 2026, the court granted Appellees' motion. In so doing, the court prohibited the parties, along with any beneficiaries of the estate, from making statements about the case publicly, prohibited counsel from commenting on the case and directly publishing in any medium about the case, and required counsel to remove all blog posts that discussed the lawsuit from their website.

Procedure

{¶12} On March 26, 2026, Appellees filed a motion to dismiss this appeal based on their argument that a gag order is not immediately appealable. On April 4, 2026, Appellant filed a motion to stay enforcement of the order during pendency of this appeal.

{¶13} On April 17, 2026, we denied Appellees' motion to dismiss, holding that the trial court order is final and appealable. On the same date, we granted in part and denied in part Appellant's motion for a stay. We denied Appellant's request to stay the order while this appeal is pending but, to preserve the status quo at the time the order was granted, allowed counsel to retain on its website any blogs or posts on social media that were on the sites prior to entry of the order.

{¶14} After a series of requests by both parties for extensions of time in which to file their briefs, on June 1, 2026, Appellant filed a motion to supplement the record with a copy of a motion to show cause filed by Appellees in the trial court. We denied the request, as the show cause motion was filed in the trial court after the notice of appeal was filed in this matter.

Final Appealable Order

{¶15} While Appellees do not appropriately raise the issue in their brief, they continue to assert that the gag order in this case is not a final appealable order. While this issue is not properly raised, we will again briefly address the matter in light of the cases cited by Appellees.

{¶16} In our earlier entry on this issue, we thoroughly explained why this matter involves a final, appealable order pursuant to R.C. 2505.02(B)(4), as the order both grants a provisional remedy which prevents judgment to the other party on the issue and no effective or meaningful remedy could be obtained following judgment on the entirety of the underlying case. Appellees continue to raise caselaw in support of their belief the trial court's gag order does not present a final order that is immediately appealable. While they are correct in that the Ohio Supreme Court determined in *In Re T.R.*, 52 Ohio St.3d 6 (1990) that a gag order is not a final appealable order, as we recognized when denying Appellees' motion to dismiss, *In Re T.R.* was decided prior to the amendments to R.C. 2505.02(B)(4) which were enacted in 1998.

{¶17} In apparent response, Appellees cite to an Eighth District case, *In re Contempt of Scaldini*, 2008-Ohio-6154 (8th Dist.). However, *Scaldini* is distinguishable in that it did not stem from the direct appeal of the decision to enter a gag order. Rather, the appeal concerned the trial court's decision finding the appellant in contempt of a gag order and issuing sanctions for contempt of that order. *Id.* at ¶ 11. Hence, *Scaldini* clearly did not address whether the gag order entry, itself, was immediately appealable. *Scaldini* provides little, if any, guidance on the question raised, here.

{¶18} Appellees also cite *Concheck v. Concheck*, 2008-Ohio-2569 (10th Dist.). In *Concheck*, the appellate court acknowledged, and the appellee conceded, that a

protective order is a provisional remedy. On review, however, the Tenth District ultimately found there was no final appealable order because the appellant retained a meaningful opportunity for a remedy. The reviewing court explained that the case involved confidential designations in discovery documents, but the trial court had provided safeguards in the form of in camera inspections and hearings, as well as making allowance for future modifications of the order or providing for declassification of confidential information. *Id.* at ¶ 10.

{¶19} *Concheck* is distinguishable from the instant matter as that case did not involve restrictions that finally decided the matter in question with no recourse. The trial court, instead, set up a system by which both parties could attack or revisit the trial court's initial rulings. Hence, *Concheck* is not analogous to the instant matter.

{¶20} Appellees also cite to *MedPace, Inc. v. ICON Clinical Research, LLC*, 2023-Ohio-4552 (1st Dist.). In *MedPace*, the gag order at issue was related to the enforcement of a non-compete clause. The *MedPace* Court explained that the preliminary non-contact order amounted to a preliminary injunction in the case on an issue where permanent injunction was sought as the ultimate remedy. In other words, a permanent injunction was sought to enjoin the same acts which the preliminary injunction enjoined. Once the permanent injunction was resolved, the appellees had the right to appeal that decision and could obtain full relief. A preliminary injunction is clearly interlocutory for that reason. *Id.* at ¶ 32. Here, what is sought to be enjoined via the gag order is not the ultimate relief sought by Appellant within her complaint, but instead the order addresses ancillary

conduct by the parties and their counsel. Further, complete relief from an erroneous “preliminary” gag order will be unavailable in an appeal on the merits of the ultimate decision, because by then the parties and counsel will have irretrievably lost the rights they now claim to possess.

{¶21} We reiterate our reasoning as set forth within our April 17, 2026 judgment entry denying Appellees’ motion to dismiss. As this matter clearly involves an order that is final and appealable per statute, we will proceed to address the merits of this appeal.

ASSIGNMENT OF ERROR NO. 1

THE TRIAL COURT’S GAG ORDER CONSTITUTES AN IMPERMISSIBLE
PRIOR RESTRAINT ON PLAINTIFF-APPELLANT’S FIRST AMENDMENT
RIGHTS, INCLUDING CORE POLITICAL SPEECH.

{¶22} Appellant breaks her arguments down into four subsections. For ease of understanding, her specific arguments will be addressed in those specific subsections. However, there are some overarching principles of law that apply, here.

General Law

{¶23} “Trial courts have a wide discretion in being able to protect the judicial process from influences that pose a danger to effective justice. *Journal Publishing Co. v. Mechem*, 801 F.2d 1233, 1236 (10th Cir.1986). This includes the authority to issue gag orders.’ ” *State v. Grate*, 2020-Ohio-5584, ¶ 65.

“Gag orders fall within the Court’s prerogative to maintain appropriate decorum in the administration of justice and protect the rights of the litigants from prejudice.” *Id.* The standard applied to gag orders imposing

restrictions on parties is whether the extra-judicial statements are “reasonably likely” to prejudice the proceedings. *Pedini*, 940 F.Supp. at 1023. Also, gag orders must be narrowly tailored and must be the least restrictive means available. *United States v. Brown* (C.A.5, 2000), 218 F.3d 415, 428.

In Re Scaldini at ¶ 13.

{¶24} The issuance of a gag order is reviewed for an abuse of discretion. *In Re T.R.* at 455. “Orders imposing restrictions on attorneys, parties, and witnesses are entitled to considerably more deference than prior restraints that are imposed against the press.” *In re Contempt of Scaldini* at ¶ 13, citing *Pedini v. Bowles* (N.D.Tx.1996), 940 F.Supp. 1020, 1023; *In re T.R.* at 40.

1. The trial court had no evidence of a clear and present danger of an imminent threat to the fairness of the proceedings, and did not narrow its restriction.

{¶25} Despite a court’s ability to impose on parties appearing before them certain restraints on speech, Appellant disagrees both with the trial court’s reasoning and our standard of review.

{¶26} Appellant explains that she is a political candidate for the position of Mahoning County Commissioner. She contends that as a candidate for elective office, she has the right to be able to communicate to voters both her reason for running for the position as well as her views on issues related to the position. She regards this right as nearly unfettered.

{¶27} Appellant contends that her mother’s death, and specifically the cause of her death, was the catalyst for her decision to seek elected office; she seeks to protect the elderly population, “an issue informed directly by her personal experience with her mother’s case and subsequent death after being a resident at the Defendants-Appellees’ facility.” (Appellant’s Brf., p. 12.) Her arguments hinge on her belief that her inability to speak publicly about this case impacts the effectiveness of her campaign to voters, especially as it pertains to the issue of protecting senior citizens. She urges that the gag order in this case is a content-based prior restriction on her speech, which is presumptively unconstitutional and triggers the application of strict scrutiny instead of abuse of discretion.

{¶28} In response, Appellees challenge Appellant’s claim that her campaign is related in any way to protecting the elderly in nursing home care. Appellees state that when addressing the gag order, Appellant informed the trial court that her political platform was centered on “taxation, government spending, and financial protections for seniors [which] *bears no relationship to the factual or legal issues in this wrongful death action.*” (Appellees’ Brf., p. 7.)

{¶29} Appellees point out that Appellant’s counsel made several statements about the underlying case to media outlets, which resulted in the publication of at least three national news articles with headlines suggesting that liability was a forgone conclusion. These articles were published mere hours before Appellant announced her candidacy. Appellees’ decision to seek a gag order to prevent further release of information about this case was grounded in their concern that any jury pool obtained in the county could be tainted, resulting in prejudice to them. Appellees classify the statements found in the

articles to be “blanket statements about liability” and believe that if Appellant is permitted to continue to make statements, their inflammatory nature will likely result in serious doubt as to their ability to receive a fair trial. Appellees believe that based on Ohio law, the trial court was completely within its discretion in limiting Appellant’s behavior.

{¶30} Both Appellant and Appellees have misstated their arguments somewhat. As to Appellant, she emphasizes that she had not disclosed discovery materials or confidential information prior to issuance of the gag order, and there was no reason for Appellees to believe this would occur. However, the gag order was requested after Appellant and her counsel made repeated statements pertaining to the lawsuit and certain of its allegations to national news media. Appellees filed the request for a gag order at the same time they filed their answer, which was prior to discovery. Hence, it would have been impossible for her to release discovery materials prior to the exchange of discovery. However, Appellees specifically raised concerns that if the gag order was not granted, discovery materials would be released publicly and Appellees would be without recourse, as the damage to their right to a fair trial would be done. Given that Appellant was actively speaking about the case, was actively campaigning, and she had intertwined the lawsuit with her political career, Appellees feared that the public statements would continue, become more inflammatory, and that discovery materials were almost certain to be released.

{¶31} As to Appellees’ contention that Appellant averred to the trial court that her political candidacy was unrelated to the lawsuit, this is also somewhat misleading. Appellees complain Appellant informed the trial court that a local news story did not mention the lawsuit, which is factually accurate. It was the national media who ran articles

addressing Appellant's lawsuit following her press conference. She did not claim that her lawsuit and the reason for her candidacy were not related. The issue of the local news story was raised to support her contention that a gag order was not warranted or necessary, apparently believing that articles written by the national press would have no effect on the local citizens.

{¶32} Appellant clearly believes that her First Amendment rights as a political candidate are constitutionally unfettered, as she asserts that she must be able to inform voters about issues and facts related to her candidacy free from any restraints. As her candidacy is motivated in large part by the incident giving rise to her lawsuit, she contends she is free to discuss any and all issues related to the protection of the elderly community, including those involved in her suit; perhaps especially those involved in her suit.

{¶33} While a political candidate undoubtedly possesses a First Amendment right to communicate his or her views to voters, that right is not completely without limit. In exercising its duty to maintain the decorum of the proceedings and protect the rights of the litigants, the trial court had the ability to weigh Appellant's right to speak against the harm likely to be caused to the decorum of the court, the rights of the other party to a fair proceeding, and the needs of justice, itself. Appellant is running for Mahoning County Commissioner and contends she is running on a platform, in part, dedicated to the protection of senior citizens. While she has the ability to campaign on such a platform, the trial court determined that Appellant and/or her counsel has already, in so doing, somewhat jeopardized the ability to obtain a fair trial in the lawsuit Appellant, herself, filed. It is certainly questionable whether statements that Appellees caused the death of Appellant's mother by failing to adhere to a treatment plan are related to the position and

duties of a county commissioner. Regardless, the trial court's entry does not entirely restrict Appellant's speech and does provide Appellant with a great deal of latitude. Appellant remains able to make statements to the public that support her declared platform so long as they remain within the bounds of the trial court's order in the matter and do not address the alleged facts, or her belief as to liability, in her lawsuit.

{¶34} Had Appellant limited her statements to general protections of senior citizens, or even assertions that she and her family have a personal stake in the issue, no gag order of any kind would have been warranted. However, statements to both national and local media (even though the local media have apparently not yet published these statements) that Appellees' care of her mother was so egregious it caused her death go far beyond support of Appellant's political platform.

{¶35} It is clear that Appellant is prohibited from speaking directly about the lawsuit publicly. This prohibition includes disclosing: the identities of the parties, the occurrence or occurrences giving rise to the lawsuit, where the controversy took place, and assertions of liability. Appellant is prohibited from publicly addressing those aspects of her lawsuit.

{¶36} However, she can speak about the subject generally. For instance, she may publicly state that she is running for commissioner because she believes the county needs an ombudsman to advocate for senior citizens. She may state that the basis for this belief is due to her experiences with a family member who she believes received sub-standard care while in a nursing home. These statements are not barred under the gag order, as they do not reference the fact that a lawsuit has been filed, do not name the opposing party, do not address the specific facts of what happened, and make no conclusion regarding legal liability. This type of general statement would allow Appellant to communicate her asserted desire to see the elderly population better protected, while at

the same time preserve the decorum of the court and protect the potential jury pool. This is especially relevant here as Appellant, a candidate for elected office, seeks to reach great numbers of the adult population in Mahoning County, who are likely voters in her race, but also potential jurors in her case.

{¶37} In her own words, Appellant intended to inform voters that the protection of senior citizens is, “an issue informed directly by her personal experience with her mother’s case and subsequent death after being a resident at the Defendants-Appellees’ facility.” (Appellant’s Brf., p. 12.) In so doing, Appellant undoubtedly sought to capture the attention of the voting public. The trial court determined that she was also likely to cause jeopardy to the rights of the parties involved in the matter and taint the pool of jurors. Liability here is yet to be determined. To allow Appellant the unreserved right to publicly discuss the case would permit her to name the parties, present only her side of the facts and evidence, and offer her own interpretation of the law and of liability. That she seeks to discuss exactly this information supports the trial court’s conclusion that without any limits Appellant was “reasonably likely” to prejudice the proceedings in the lawsuit. This is particularly true when the record clearly supports the court’s determination that Appellant may accomplish her goal to publicly discuss her declared campaign platform without addressing the parties in the lawsuit, the facts of the case, or the issue of liability.

{¶38} We are aware that federal cases are not binding in state court. However, the cases cited by Appellees do provide some guidance on this issue, which has seldom been litigated. The first arises in a case involving a local high school football team hazing incident. Following a great deal of online discussion of the case by a party and its counsel, in an order dated December 18, 2025, the judge issued a gag order. In its accompanying legal analysis, the court found that plaintiff’s counsel had posted at least eight blogs on

its website, each addressing specific information related to the case. The court determined that counsel had “publicly commented on cases being litigated in federal court in ways that are ‘a serious and imminent threat to the administration of justice.’ ” *Jane Doe, et al. v. Ursuline High School, et al.*, Case Nos. 4:25-CV-01822, 4:25-CV-01895, 4:25-CV-02494, 4 (N.D. Ohio Dec 18, 2025). It explained that the jury pool would include potential jurors from Mahoning, Columbiana, and Trumbull Counties which are in Northeast Ohio, the area where the media attention had occurred. *Id.* Ultimately, the gag order was issued because the court concluded that these statements created a risk that prospective jurors would be influenced in their assessment of the defendant’s character and credibility. *Id.* at 5.

{¶39} While the facts of *Jane Doe* were somewhat salacious and the case undoubtedly attracted more public attention than the instant matter, if Appellant was permitted to continue to speak to national and local news media and center her campaign platform on the specific facts of her lawsuit, there is a high potential of the same risk. Statements in both cases tended to disparage the character and credibility of the opposing party and to pre-determine liability or guilt by attempting to influence public opinion as to the merits of the case.

{¶40} Again, the standard here, is “whether the extra-judicial statements are ‘reasonably likely’ to prejudice the proceedings.” *In Re Scaldini* at ¶ 13. National headlines could certainly affect public knowledge within the jury pool territory, and these particular headlines, alone, could lead the reader to the inference that liability is certain. We note that while the gag order was prompted by the news articles, Appellant announced her intent to use the lawsuit in her campaign rhetoric. Based on Appellant’s own admissions, absent a gag order it appears “reasonably likely” the parties will suffer

prejudice. We also note that Appellant’s voters are located in the county where the lawsuit will ultimately be decided. Hence, Appellant’s voter base would make up the jury pool. This increases the likelihood for prejudice.

{¶41} In the second case, the facts are somewhat more aligned, as the matter also included political speech. *Gedeon v. Frenchko*, Case No. 4:22-CV-441 (N.D. Ohio March 28, 2022). In *Gedeon*, the defendant made the following public comments regarding the politically related litigation:

The instant action is an “effort to inhibit me from holding them accountable to the taxpayers. This lawsuit, like the others, will fail because I’m simply making people work for the taxpayers again. I will not be deterred by their outlandish claims nor their political stunts.”

“I am very sensitive to language. I’ve had to cut off dealing with certain people because they’ve made comments” that stereotype people.

“My uncle is Honduran and Puerto Rican.”

“I have never made any comments to staff about their ethnic heritage or about anyone’s heritage[.]”

“That so bothers me that anyone would say anything. My family is immigrants ourselves, even the Eastern European half. We came over, and they worked in the coal mines and the steel mills.”

“I don’t make ethnic slurs. It’s disgusting and not who I am, not who I’ve been raised to be.”

Id. at 2.

{¶42} Without much analysis, the federal district court concluded that a substantial basis existed to show the comments would taint any prospective jury pool and prejudice the parties’ right to a fair trial. The court also determined there was no reasonable alternative to the issuance of a gag order, as “the most effective way to prevent the parties from offering additional public comment is to prohibit it through an Order.” *Id.* at 2.

{¶43} In a subsequent violation of its gag order, the court specifically stated that the defendant’s “role as a politician does not insulate her from the directives set forth by Orders of the Court.” *Gedeon v. Frenchko*, 2022 WL 4356209, *3 (N.D.Ohio Sept. 19, 2022) citing *United States v. Brown*, 218 F.3d 415, 418 (5th Cir. 2000) (affirming *sua sponte* a gag order imposed on a prominent Louisiana politician because the court found that his public comments “could interfere with a fair trial”).

{¶44} Calling such media statements “trial by newspaper,” the *Brown* case relied on by the *Gedeon* Court rejected a “clear and present danger” test. The *Brown* court noted that “ ‘[e]xtrajudicial comments on, or discussion of, evidence which might never be admitted at trial and ex parte statements by counsel [or parties] giving their version of the facts obviously threaten to undermine [the] basic tenet’ that the outcome of a trial must be decided by impartial jurors.” *Brown* at 429, citing *Gentile v. State of Nevada*, 501 U.S. 1030. In a politically charged case, the *Brown* court ultimately upheld the gag order under “a lesser showing of potential prejudice” despite the fact that the party whom the gag order was intended to restrict was a political figure, instead determining that a “reasonable likelihood” of prejudice to a fair trial is the standard. This is consistent with *Jane Doe* and *Gedeon*.

2. The trial court did not weigh the actual and real infringement on plaintiff-appellant's political speech against the theoretical harms of defendant-appellee.

{¶45} Appellant also contends that the trial court failed to weigh the infringement on her speech versus the harm of allowing that speech to occur, which she frames as speculative. Appellant argues the trial court lacked evidence that she has publicized discovery materials, released non-public or confidential information, or made statements of fact beyond those contained within the complaint. Hence, Appellant posits that there was no immediate danger to the fairness of a trial, notably one that could be years away depending on the progress of the pre-trial stage of litigation and the ease of scheduling a trial date. She complains that restriction on her speech, now, directly interferes with her ability to honestly speak to voters, and urges this would cause her irreparable harm, as the election would long be over before she is able to publicly speak about the lawsuit.

{¶46} Appellees first note that there is no legal requirement that a court make findings of fact when weighing and balancing the competing interests of the infringement on speech against the harm. However, even if this were required of the court, the remedy would not be to have this Court vacate the order. It would entail a remand to allow the trial court to make its findings. Regardless, Appellees correctly contend the competing interests are found in the record. As we have earlier discussed, these support the trial court's assessment and decision.

3. The trial court did not employ, or consider, less restrictive means to protect the fairness of the proceedings.

{¶47} Appellant takes issue with what she believes to be the trial court's overreach in entering the gag order. She claims the court could have simply addressed the stated

harm by means of a thorough *voir dire* process at trial or by limiting only certain public statements. Appellant contends that the gag order, here, serves to completely prohibit her from discussing any matters related to the death of her mother.

{¶48} Appellees respond by noting that the gag order contains no prohibition on members of the media or of the general public from routine commentary on the case. Instead, the order is limited specifically to the parties (and counsel) in this case and restrict only extrajudicial statements on the pending litigation. Appellees also note that Appellant’s status as a political candidate does not insulate her from any prohibitions on making extrajudicial comments regarding a pending legal matter. Appellees explain that the gag order has nothing to do with Appellant’s political career and does not prohibit her from campaigning. Simply put, the order seeks to establish decorum regarding pending litigation.

{¶49} In *Brown*, the Court noted that “even ‘[e]xtensive voir dire may not be able to filter out all of the effects of pretrial publicity, and with increasingly widespread media coverage of criminal trials, a change of venue may not suffice to undo the effects of statements” by trial participants. *Id.* at 431, citing *Gentile* at 2745. “Like voir dire, ‘emphatic’ jury instructions may be at best an imperfect filter, and would also fail to address the threat of a ‘carnival atmosphere’ around the trial.” *Id.*, citing *Levine v. U.S. District Court*, 764 F.2d 590, 600 (9th Cir.1985). The Court emphasized that “when considering how to ‘cure’ the effects of pretrial publicity, a trial court’s overriding object must be to institute ‘those remedial measures that will prevent the prejudice at its inception.’ ” *Id.* at 431, citing *Sheppard v. Maxwell*, 86 S.Ct. 1507, 1522 (1966). Hence, the Court ultimately concluded that, “[g]iven the difficult and ‘necessarily speculative’ task of trying to prevent prejudice that has not yet occurred—a task that involves the weighing

of ‘factors unknown and unknowable’—we do not believe that the district court erred in imposing the gag order on Brown and the other trial participants in this case.” *Id.*, citing *Nebraska Press Assoc. v. Stuart*, 96 S.Ct. 2791, 2804 (1976).

{¶50} Similarly, there is no way to know in this matter how far Appellant desires to take her speech. There is also no way to know with certainty how many potential jurors within the potential juror pool in Mahoning County her speech may reach. However, the record does reflect the trial court weighed the likelihood of harm on both parties.

4. The gag order does not withstand strict scrutiny and must be struck down.

{¶51} Appellant posits that as the gag order infringes on her speech, it is subject not to an abuse of discretion review, but to the much higher standard of strict scrutiny. She claims it heavily impacts her First Amendment rights, particularly her right to political speech during a political campaign.

{¶52} As we have earlier explained, however, Ohio law permits trial court judges, in the administration of justice and to protect the judicial process from prejudice, to use their discretion and impose certain restrictions on the speech of litigants and counsel in order to preserve the decorum of the court and in the interest of justice. This includes issuing a gag order. And while these orders must be narrowly tailored to provide the least restrictive means of impinging on a parties’ rights, because the court possesses discretion, its decision is reviewed for an abuse of that discretion. Strict scrutiny is not the standard here, and courts are accorded deference in their decisions regarding gag orders on the parties to a case.

{¶53} The basic thrust of Appellant’s argument here, has already been addressed. Appellant’s political candidacy does not insulate her from a gag order. While she urges

that in order for her speech to be impinged Appellees must show there was an imminent threat of harm, Appellant's imminent threat standard is not found in Ohio law and has been rejected by federal courts, including the Northern District of Ohio. Instead, the standard is "whether the extra-judicial statements are 'reasonably likely' to prejudice the proceedings." Here, the national news articles triggered by Appellant's press conference and her desire to discuss her lawsuit at political rallies provided the trial court with the necessary support for its finding that there was a reasonable likelihood of prejudice to the proceedings. In addition, the court's decision does not appear unreasonable, as it was narrowly tailored to allow Appellant to generally discuss the issues she desired with likely voters while preventing her from providing specific information about her lawsuit. This also appears to be the least restrictive means for the court to ensure the impartiality of the proceedings and any prospective jurors. Hence, our review of this record reveals the court did not abuse its discretion in issuing the gag order. Accordingly, Appellant's first assignment of error is without merit and is overruled.

ASSIGNMENT OF ERROR NO. 2

THE TRIAL COURT ISSUED AN IMPERMISSIBLE PRIOR RESTRAINT OF PLAINTIFF-APPELLANT'S COUNSEL'S FIRST AMENDMENT RIGHTS BY GRANTING DEFENDANTS-APPELLEE'S MOTION FOR GAG ORDER LIMITING PUBLIC STATEMENTS OF COUNSEL AND PARTIES ON FEBRUARY 23, 2026.

{¶54} Appellant complains that the gag order also improperly prohibited her counsel from speaking directly or indirectly about the lawsuit. Appellant urges that counsel only commented on information available in the publicly filed complaint and did

not divulge confidential information. Appellant relies on Prof.R. 1.6 to support her contention that her counsel's behavior was not improper. She also claims that regulation of attorney speech is limited to prohibit only that which is likely to have a materially prejudicial effect. She contends there is no evidence of improper or prejudicial extrajudicial statements, as her attorney's sole speech in the matter tracked the information contained in her publicly available complaint.

{¶55} Appellees respond that this issue was waived, as Appellant did not raise this issue below. Even so, Appellees observe that Appellant's counsel has a history of making inflammatory public comment. Appellees urge that this behavior constitutes a deliberate attempt to "outrage the community" and "elicit sympathy."

{¶56} In her argument, Appellant makes much of the fact that counsel did not reveal any discovery material or confidential information in her press conference. Again, as the request for a gag order was filed at the same time as the answer in the suit, discovery had not yet occurred and it was not yet possible for counsel to have revealed any of that information. The gag order was an attempt to prevent the improper release of information before it occurred.

{¶57} As to the issue of waiver, Appellees' motion for a gag order did not specifically raise or address counsel's blogs. While the motion sought to limit both parties and their counsel, the first mention of Appellant's counsel's blogs or online presence is found within the court's entry. It is clear that the court was made aware of counsel's online activities but it is not clear that Appellant or her counsel were able to object to restraints on its online activities. Hence, this appeal would be the first opportunity to challenge that issue.

{¶58} We note that Appellant cites Prof.R. 1.6, but clearly intended to cite to Prof.R. 3.6, instead. Regardless, both rules pertain only to disciplinary actions taken against attorneys. It is entirely possible for an attorney to be subject to a gag order but not subject to discipline. Disciplinary action is not at issue, here. Hence, any discussion of these rules is immaterial to this matter.

{¶59} It is clear from *Jane Doe, supra*, that a court does not abuse its discretion when the judge prevents counsel from making statements and releasing sensitive information about an active case when prior public statements have created media attention. This standard is applicable to any statements made online as well as in person. In *Jane Doe*, the court noted that counsel had blogged on at least eight occasions about the case. *Id.* at 4. The court found that these blogs, unchecked, may well prejudice the defendant's right to a fair trial, as they created a substantial probability of influencing how prospective jurors assess the defendants' character and credibility. *Id.* at 5.

{¶60} Appellant's counsel in this matter was actively making public statements to national and local news media and blogging about the case on its website. It appears clear that counsel was initially responsible for the comments to the public the court believed were likely to cause prejudice in this case. Most of the comments that led to the gag order appear to actually be made through counsel speaking on Appellant's behalf. It is unclear if Appellant instructed her counsel to make the statements, however, it is clear that she endorses those statements.

{¶61} Again, we must emphasize that the gag order was sought and obtained to preserve a jury pool that will be comprised of the same group of citizens Appellant seeks to reach in her active campaign for elected office: the voters of Mahoning County. There is no question that Appellant seeks to be elected as a Mahoning County Commissioner.

There is also no question that Appellant filed the lawsuit in Mahoning County. Hence, the jury pool will be comprised of eligible citizens of Mahoning County.

{¶62} Appellant urges that all of the information revealed in this matter merely tracked information contained within her complaint. The complaint was the only source of specific information at the time of the gag order. Even so, an average person would be very unlikely to, on their own, review the contents of the complaint absent Appellant's very public press conference. It is doubtful that many people recreationally review the contents of any or all lawsuits filed in any given jurisdiction. However, it is quite possible they would read an article on the matter in the news media, or hear Appellant speak about the lawsuit, its facts, and her opinion as to liability publicly or read counsel's blogs or social media posts. Thus, the fact that the statements made so far in this suit may be available to a member of the public who chooses to look for and read the complaint for themselves does not aid Appellant's arguments that a gag order would not help preserve judicial decorum.

{¶63} While any member of the public can access any publicly filed document, including a complaint, the court has an interest in keeping Appellant and her counsel from widely disseminating the complaint and its contents, as they intended. For example, a potential juror reviewing the complaint could gain knowledge of inadmissible evidence. As earlier discussed, the lawsuit is still in the pretrial stages and it is unknown exactly what evidence will be admitted at trial. Several graphic photographs are included within the complaint. There is no guarantee at this stage that any or all of these specific images will be admitted into evidence. This raises the real possibility inadmissible evidence will be seen by a potential juror. Should Appellant be allowed to openly and without limitation address her lawsuit in the detailed fashion to which she believes she has a right, the

potential that a juror is exposed to irrelevant and/or prejudicial information increases exponentially.

{¶64} The court did not abuse its discretion, here. Appellant, through her counsel, made public comments in regard to pending litigation that were published in the national news. Appellant's counsel posted online information regarding the details of the suit. Appellant openly seeks to continue publicly discussing her lawsuit in a manner directed at reaching Mahoning County voters, the same persons who will comprise the jury pool in this case. The record fully supports the trial court's conclusion there is a great potential this will either cause Appellees prejudice in how potential jurors will judge their credibility and character, or result in causing the jury pool to become so tainted that a fair trial in this county is not possible. Accordingly, Appellant's second assignment of error is without merit and is overruled.

STAY

{¶65} We note that the partial stay to maintain the status quo granted by this Court allowing Appellant's counsel to maintain whatever information was contained in their blogs or social media at the time the order was issued to remain online applied only through the course of the appellate process. Given that we affirm the court's decision in full, the stay is lifted and the trial court's initial removal order is reinstated.

Conclusion

{¶66} Appellant argues that the gag order violates her First Amendment rights, particularly as a political candidate, and the rights of her counsel. She urges this Court to find the trial court's remedy is unconstitutional or at least amounts to an abuse of its discretion. However, a trial court maintains full discretion to protect the court's demeanor, justice, and the fairness and impartiality of its proceedings. Ohio law permits a court to

use this discretion and subject litigants and counsel to balanced and narrowly tailored gag orders in pending litigation in furtherance of these goals. Our review of this record reveals the trial court did not abuse its discretion, here. For the reasons provided, Appellant's arguments are without merit and the judgment of the trial court is affirmed.

Robb, J., concurs.

Dickey, J., concurs.

For the reasons stated in the Opinion rendered herein, Appellant's assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. The partial stay granted by this Court is lifted and the trial court's initial removal order is reinstated. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.