

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

ADAM MAZUR,	:	
Plaintiff-Appellant,	:	
v.	:	No. 115541
JOHN DOES 1-3, ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: October 15, 2026

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-24-104269

Appearances:

Buckingham Doolittle & Burroughs, LLC, Andrew C. Stebbins, and Christina N. Williams, *for appellant*.

Harvey + Abens Co., LPA, Matthew B. Abens, and David L. Harvey III, *for appellees*.

SEAN C. GALLAGHER, J.:

{¶ 1} Adam Mazur appeals the dismissal of his amended complaint against Trevor Elkins and Executive Targeting and Consulting, LLC (collectively “Elkins defendants”), for failure to state a claim under Civ.R. 12(B)(6) based on the

expiration of the statute of limitations. For the following reasons, we reverse the trial court's dismissal of the action and remand for further proceedings.

{¶ 2} Elkins, recently reelected as the Mayor of Newburgh Heights, is alleged to have undertaken a years-long harassment campaign against Mazur. Mazur is a citizen of Newburgh Heights who headed a recall campaign targeting Elkins before Elkins originally resigned from office facing criminal campaign-finance issues to which he pleaded guilty. Elkins's reelection occurred after he served the sentence imposed for his offenses. Elkins or a corporation he manages, Executive Targeting and Consulting, LLC, owns and operates at least two websites. Each website and its respective domain name usurps the name and identity of political opponents of Elkins. The one dedicated to Mazur, www.adammazur.net ("the Website"), is alleged to have doxxed and attacked Mazur in an attempt to harass and discredit his political efforts aimed at Elkins. The other website, www.anthonydattilo.com, allegedly contains additional false statements about Mazur published on a different time frame. The amended complaint also alleges that the Website has been updated since the filing of the complaint, potentially impacting the publication date for the purposes of the statute of limitations.

{¶ 3} The Elkins defendants do not address that portion of the allegations in this appeal, nor have they ever. Both of those allegations ostensibly impact the statute-of-limitations analysis being asked of this panel to review.

{¶ 4} Claims for defamation and false light are both governed by a one-year statute of limitations as set forth in R.C. 2305.11(A). *Battaglia v. Donegan*, 2024-

Ohio-6022, ¶ 27 (8th Dist.). A cause of action for defamation accrues “at the time the alleged defamatory statement is first published or disseminated to a third party.” *Hester v. Case W. Res. Univ.*, 2019-Ohio-1991, ¶ 11 (8th Dist.), citing *T.S. v. Plain Dealer*, 2011-Ohio-2935, ¶ 7 (8th Dist.). The Elkins defendants claim that the accrual date for the statements on the Website is September 24, 2023, despite the allegations in the amended complaint suggesting later accrual dates. There is no dispute, however, that the original complaint was filed within one year of that date.

{¶ 5} The sole issue dispositive of this appeal is whether the amended pleading, filed outside of that one-year time frame, relates back to the original filing date based on Civ.R. 15(D). If Mazur complied with Civ.R. 15(D), then the dismissal of all claims was in error irrespective of the additional allegations in the amended complaint ignored by the Elkins defendants.

{¶ 6} In the original complaint, Mazur presented allegations of defamation and false light against John Doe defendants 1-3, identified as the owner and operator (identified as the creator and publisher in the complaint) of the Website. According to Mazur, “prior to July 2023,” he discovered that “a website had been created in his name and likeness.” Mazur alleged that because the Website contained his full name, it appeared prominently in results whenever his name was searched on the internet. The Website displayed certain public records related to him, including arrest records from an earlier period in Mazur’s life, in a manner that was “clearly intended to cause embarrassment and ridicule” rather than bland assertions of fact.

{¶ 7} In demonstrating what Mazur claimed was the Elkins defendants' intent, Mazur additionally alleged that in July 2023, the Website was temporarily altered to redirect browsers to pornography on the website pornhub.com. Mazur asserted that "the Doe Defendants did [this] in order to mislead viewers into believing that one of the videos that appeared was, in fact, of [Mazur] — which it certainly was not."

{¶ 8} According to the allegations in the complaint, on September 24, 2023, the Website was updated to delete the redirect. The Website published images of Mazur and a bolded statement: "PUBLIC RECORD: Adam Mazur . . . Garfield Heights Municipal Court 2020," a court case number, and "Convicted of Domestic Violence on 8/3/2020." The Website also includes statements claiming that the offense was "so violent" that Mazur is "never permitted to own a gun again." Sometime after the filing of the original complaint, the Website was amended again according to the allegations in the amended complaint specifically identifying the Elkins defendants.

{¶ 9} Mazur, in the complaint, included allegations that the John Doe defendants 1-3 are "anonymous individuals who were responsible for creating and publishing a website prominently featuring false and defamatory statements about [him]" who purposely evaded being named in the complaint by concealing their names under all publicly available searches for the owners of websites. In other words, Mazur identified two of the three John Doe defendants identified in the complaint, named as John Doe 1 and 2 for all intents and purposes.

{¶ 10} Although Mazur claimed that the “identities” of the John Doe defendants was unknown in the complaint, that statement is a misnomer. He *identified* the John Doe 1-2 defendants as the owner (creator) and operator (publisher) of the website, but he was unable to *name* them in the complaint because they purposely concealed themselves despite what should have been publicly available information regarding the domain name.

{¶ 11} According to the amended complaint, he was able to name Elkins and Executive Targeting as the owner and operator of the Website and anthonydattilo.com in February 2025 after conducting preliminary discovery. Amended Complaint at ¶ 64. Thus, in terms of Civ.R. 15(D), following commencement of the action, Mazur discovered the name of the owner and operator of the Website, Elkins and Executive Targeting, and amended the complaint to substitute them for the previously identified individuals named as John Does 1-2. *See* Civ.R. 15(D); *Erwin v. Bryan*, 2010-Ohio-2202, paragraph one of the syllabus (“Erwin”) (“Pursuant to Civ.R. 15(D), a complaint against a party whose name is unknown must describe the defendant and a summons containing the words ‘name unknown’ must be personally served on the defendant.”).

{¶ 12} The amended pleading included an additional claim for intentional infliction of emotional distress and a claim for civil liability for telecommunications harassment under R.C. 2917.21. The Elkins defendants lump those new claims under the umbrella of the one-year statute of limitations for defamation.

{¶ 13} Elkins and Executive Targeting filed a motion to dismiss the Amended Complaint pursuant to Civ.R. 12(B)(6), arguing that all of Mazur’s claims were barred by the one-year statute of limitations for defamation under R.C. 2305.11(A) solely based on the allegations in the pleadings, which at this point in the procedural history were limited to the amended complaint and the supplanted complaint. The Elkins defendants waived service of the original complaint and summons under Civ.R. 4.7, according to an unchallenged waiver document attached to Mazur’s brief in opposition to the motion to dismiss.¹ For unknown reasons, the Elkins defendants failed to address the waiver question and nonetheless claimed that the amended complaint did not relate back to the filing of the complaint because the personal service of the summons was not completed.

{¶ 14} The trial court agreed with the Elkins defendants, and the action was dismissed as time-barred. Mazur timely appealed advancing two assignments of error, the first of which is dispositive: “The trial court erred in granting defendant’s Civ.R. 12(B)(6) motion to dismiss, as the court cannot state as a matter of law that the [Amended Complaint] contains no set of facts upon which relief can be granted.” Mazur is correct. The trial court erred by dismissing the action under the one-year

¹ Because the waiver was attached to the brief in opposition and the Elkins defendants did not object to consideration of the document, it can be considered in this appeal as being part of our record. In light of the failure of the Elkins defendants to address the waiver, the only argument presented is Mazur’s. Notwithstanding, plaintiffs must be cognizant that waivers must be filed under Civ.R. 4.7(E), and when filed, proof of service is not required and “these rules apply as if a summons and complaint had been served at the time of filing of the waiver.”

statute of limitations. The amended complaint relates back to the original filing date because Mazur complied with the requirements established under Civ.R. 15(D) and *Erwin*, 2010-Ohio-2202, and as a result, the action was timely even considering the Elkins defendants' argument that the one-year statute of limitations applies to all claims advanced in the amended complaint. Accordingly, the case commenced within the one-year statute of limitations from the September 2023 accrual date irrespective of the additional allegations in the amended complaint alluding to later-in-time publications of defamatory material impacting the statute of limitations analysis.

{¶ 15} “Application of a statute of limitations presents a mixed question of law and fact; when a cause of action accrues is a question of fact, but in the absence of a factual issue, application of the limitations period is a question of law.” *Schmitz v. NCAA*, 2018-Ohio-4391, ¶ 11, citing *Wells v. C.J. Mahan Constr. Co.*, 2006-Ohio-1831, ¶ 25 (10th Dist.). “A defendant may only assert a statute-of-limitations defense through a Civ.R. 12(B)(6) motion—and a court may only grant such a motion—when the defense is apparent from the face of the complaint.” *Gadway v. Univ. of Toledo*, 2025-Ohio-1983, ¶ 8 (10th Dist.), citing *Gore v. Mohamod*, 2022-Ohio-2227, ¶ 14 (10th Dist.). Importantly in this context, in order to “conclusively establish the statute-of-limitations defense, the complaint must show (1) the relevant statute of limitations *and* (2) the absence of factors that would toll the statute of limitations or make it inapplicable.” (Emphasis added.) *Id.* at ¶ 8, citing *Stafford v. Columbus Bonding Ctr.*, 2008-Ohio-3948, ¶ 23 (10th Dist.).

{¶ 16} In this case, the Elkins defendants focus on the relevant statute of limitations as it relates to the amended pleading under Civ.R. 15(D) and *Erwin* to the exclusion of considering the absence of factors that would toll or make the statute of limitations inapplicable.

{¶ 17} Civ.R. 15(D) provides:

When the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description. When the name is discovered, the pleading or proceeding must be amended accordingly. The plaintiff, in such case, must aver in the complaint the fact that he could not discover the name. The summons must contain the words “name unknown,” and a copy thereof must be served personally upon the defendant.

Thus, “when a plaintiff designates a defendant by a fictitious name, Civ.R. 15(D) requires that the plaintiff provide a description of the defendant in the pleadings and aver in the complaint the fact that the plaintiff could not discover the *name*.” (Emphasis added.) *Erwin*, 2010-Ohio-2202, at ¶ 23. “Civ.R. 15(D) is designed with the limited purpose of accommodating a plaintiff who has *identified* an allegedly culpable party but does not know the *name* of that party at the time of filing a complaint.” (Emphasis added.) *Id.* at ¶ 30. There is no requirement for a party to explain why they were unable to discover the name of the party identified in the complaint. The plaintiff simply needs to allege they are not able to properly name them at the time the complaint is filed. *Id.* at ¶ 31. In fact, all that is required is that the complaint “sufficiently identif[ies] that party to facilitate obtaining personal service on that defendant upon the filing of the complaint.” *Id.*; see also *Varno v. Bally Mfg. Co.*, 19 Ohio St.3d 21, 24 (1985) (“Civ. R. 15(D) is clear; the complaint

must sufficiently identify the unknown defendant so that personal service can be obtained upon filing the lawsuit.”).

{¶ 18} Importantly, *Erwin* did not create a time limit for when that service of the summons and complaint needs to be perfected when the defendant is identified in the complaint but unnamed. *See Erwin* at ¶ 25. “[A] plaintiff may benefit from the one-year period allowed in Civ.R. 3(A) to perfect personal service upon the fictitiously named defendant if the plaintiff has otherwise complied with Civ.R. 15(D).” *Id.*, citing *Amerine v. Haughton Elevator Co.*, 42 Ohio St.3d 57, 58 (1989). Thus, a plaintiff needs to identify the defendant fictitiously named and state in the complaint that they are unable to name that defendant. That complaint and a summons containing the words “name unknown” must be personally served on the defendant within the one-year period under Civ.R. 3(A). The Elkins defendants, however, expressly waived service of the summons and original complaint, and their failure to address this procedural quirk apparent from the record presented for review obviates the need to entertain a discussion of the personal-service question.

{¶ 19} Mazur did not issue personal service of the summons because the Elkins defendants waived that service. They cannot now benefit from that waiver by claiming that the summons was never personally served. Our sole focus, therefore, is on whether Mazur complied with the first part of Civ.R. 15(D) by identifying the John Doe defendants in the complaint and averring that he could not discover the names of those defendants at the time the complaint was filed.

{¶ 20} In the original complaint, Mazur provided a brief description identifying the defendants, the owner and operator of the Website and domain name bearing Mazur’s name and likeness, identifying those defendants as the creator and publisher of the Website. Although the complaint also included an allegation that Mazur could not “identify” the defendants, that statement is a misnomer. Mazur *identified* the John Doe 1-2 defendants: the owner and operator of the Website. He was simply unable to *name* them in the complaint under their true names, instead referring to them as John Doe 1-2.

{¶ 21} By way of comparison, John Doe 3 was not identified in the complaint or amended complaint for that matter, with only the amended complaint referring to John Doe 3 as “an individual and resident of Cuyahoga County, Ohio who has worked in concert with the named Defendants to engage in the tortious activity that is described herein.” The Elkins defendants do not specifically address the inclusion of John Doe 3 as a placeholder for an unidentified individual. *See Erwin* at paragraph two of the syllabus (“Civ.R. 15(D) does not authorize a claimant to designate defendants using fictitious names as placeholders in a complaint filed within the statute-of-limitations period and then identify, name, and personally serve those defendants after the limitations period has elapsed.”). Nonetheless, John Doe 3 is arguably a placeholder, which is precluded under *Erwin*, 2010-Ohio-2202. That defendant was not identified in the complaint or amended complaint. In light of the fact that the individual named John Doe 3 is not a party to this action at this point in time, our observation is merely illustrative, not a conclusive holding.

{¶ 22} Thus, Mazur has demonstrated that he identified the Elkins defendants in the original complaint despite being unable to name them at that time. *See* Civ.R. 15(D).

{¶ 23} Mazur also alleged that the names of the owner and operator (John Doe 1 and 2) could not be discovered because of active concealment by the defendants (for more on the active concealment issue, *see* the separate concurring opinion below). *See* Civ.R. 15(D) (“[T]he plaintiff, in such case, must aver in the complaint the fact that he could not discover the name.”). Mazur filed the underlying lawsuit claiming he could not name the owner and operator of the website (referred to as the creator and publisher in the complaint) because “the website was published without any contact information available thereon and registered . . . in a way to hide the owner of the domain name.” Thus, Mazur properly invoked the second requirement under Civ.R. 15(D), which provides that “[w]hen the plaintiff does not know the name of a defendant, that defendant may be designated in a pleading or proceeding by any name and description.” *Id.* Although unaware of the names of John Doe 1 and 2, he specifically identified them as the owner and operator of the Website, sufficient identification of the defendants in the complaint as filed.

{¶ 24} The remaining question of whether that identification could have led to personal service cannot be considered in light of the waiver of personal service of the summons and complaint by the defendants. The Elkins defendants failed to address that issue despite Mazur’s argument in this appeal relying on the waiver.

This panel cannot provide arguments in the Elkins defendants' defense. See *Snyder v. Old World Classics, L.L.C.*, 2025-Ohio-1875, ¶ 4 (articulating the limits on an appellate court's ability to sua sponte raise arguments on behalf of parties).

{¶ 25} Based on the unchallenged argument presented by Mazur, on March 25, 2025, Elkins and Executive Targeting and Consulting waived service of the initial summons and complaint under Civ.R. 4.7, which would obviate the need for Mazur to personally serve them with a summons. The impact of that waiver on Civ.R. 15(D)'s requirement that the "summons must contain the words 'name unknown' and a copy must be personally served" must be resolved in Mazur's favor because the defendants have failed to address their waiver altogether. Even in this appeal, the Elkins defendants are conspicuously silent on the waiver discussion. Importantly, waiver of service of the summons was not an issue in *Erwin*, 2010-Ohio-2202, because Civ.R. 4.7 did not exist at that time.

{¶ 26} Mazur's identification of the owner and operator of the Website in the complaint, along with those owners' waiver of the service of the initial summons and complaint, satisfies the Civ.R. 15(D) requirements such that the amended complaint relates back to the date of original filing, which was within the one-year statute of limitations the Elkins defendants claim is applicable.

{¶ 27} Because the Elkins defendants' argument is dispelled by the record, the trial court erred by dismissing this matter as time barred. Because that resolves all issues presented in this appeal, the dismissal is reversed and the matter

remanded for further proceedings on all claims advanced in the amended complaint against the Elkins defendants.

It is ordered that appellant recover of said appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

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

SEAN C. GALLAGHER, JUDGE

EILEEN T. GALLAGHER, J., CONCURS (WITH SEPARATE OPINION);
LISA B. FORBES, P.J., DISSENTS (WITH SEPARATE OPINION)

EILEEN T. GALLAGHER, J., CONCURRING:

{¶ 28} I concur in full with the majority’s decision. I write separately to emphasize that cases involving anonymous online tortfeasors should be looked at very carefully, particularly with regard to dismissal for failure to timely name the defendants. Individuals who claim they have been defamed on the internet deserve to have their day in court, and tortfeasors should not be permitted to conceal themselves and use the statute of limitations as a shield. “While permitting anonymous speech may protect an open marketplace of ideas, it also creates the danger of abuse inherent when individuals think that they will not be held responsible for their actions.” Chilson, Jessica L., Note, *Unmasking John Doe*:

Setting a Standard for Discovery in Anonymous Internet Defamation Cases, 95 Va. L. Rev. 389, 395 (2009).

{¶ 29} There is often significant time and effort expended by plaintiffs to obtain the data behind websites containing defamatory statements. Claimants must use subpoenas that may or may not be answered in a timely fashion or commence pre-suit discovery proceedings under Civ.R. 34 or R.C. 2317.48, which also do not yield immediate results. Moreover, there is a vast difference between the identification of a tortfeasor from a finite group of potential defendants as in *Erwin v. Bryan*, 2010-Ohio-2202 (doctors that provided care to a certain patient at a specific hospital on a particular day) and a limitless set of unnamed individuals online. While Mazur stated that he believed his tortfeasors to be citizens of Newburgh Heights, given the breadth of the internet, the potential defendants could have been anyone in the world.

{¶ 30} For these reasons, I want to acknowledge an alternative basis under which this matter could have been considered. Mazur alleged in his complaint and later argued in his brief in opposition to the motion to dismiss that the defendants had engaged in efforts to conceal their names and identities. The trial court therefore could have analyzed whether the statute of limitations had been tolled under R.C. 2305.15(A)(1). This statute provides:

[W]hen a cause of action accrues against a person, if the person is out of the state, has absconded, or conceals self, the period of limitation for the commencement of the action as provided in sections 2305.04 to 2305.14, 1302.98, and 1304.35 of the Revised Code does not begin to run until the person comes into the state or while the person is so

absconded or concealed. After the cause of action accrues if the person departs from the state, absconds, or conceals self, the time of the person's absence or concealment shall not be computed as any part of a period within which the action must be brought.

{¶ 31} This court has addressed the application of R.C. 2305.15 in *Hardin v. Divelbiss*, 1989 Ohio App. LEXIS 709 (8th Dist. Mar. 2, 1989). In *Hardin*, the unnamed defendant had left the scene of an accident and refused to provide his personal information; the plaintiff argued that he did so to conceal his identity. This court reversed the trial court's dismissal based upon the statute of limitations and remanded the case to the trial court to determine whether the defendant had left the accident scene to conceal his identity and if the statute of limitations had been tolled under R.C. 2305.15. The panel noted that the trial court had improperly applied Civ.R. 15(C) because "if the [trial] court determined that the statute of limitations was tolled under R.C. 2305.15, then it would be erroneous to dismiss the complaint on the grounds that it did not relate back under Civ.R. 15(C)." *Id.* at *6.

{¶ 32} I am mindful of the party-presentation principle. While Mazur alleged that the defendants registered the website in a way to hide their identity and noted in his brief opposing the motion to dismiss that the defendants had "concealed" their ownership of the website to shield themselves from liability, he did not argue that the statute of limitations had been tolled under R.C. 2305.15 because of the concealment.

{¶ 33} Nevertheless, it has long been recognized that "[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal

theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law.” *State ex rel. Gatehouse Media Ohio Holdings II Inc. v. Columbus Police Dept.*, 2025-Ohio-5243, ¶ 64, quoting *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991). “The party presentation principle is supple, not ironclad.” *United States v. Sineneng-Smith*, 590 U.S. 371, 376 (2020).

{¶ 34} Consequently, in the instant matter, both the trial court and this court were not limited to the parties’ arguments regarding Civ.R. 15 and its application to this case. Because Mazur had noted in his complaint and brief in opposition that the defendants had engaged in efforts to conceal their names, the issue of whether R.C. 2305.15 had tolled the statute of limitations was properly before the court.

{¶ 35} In analyzing this case under the statute, the trial court would first determine whether Mazur pleaded sufficient facts in his complaint regarding his claim that the defendants concealed themselves. *See Kelley v. Stauffer*, 2010-Ohio-4522 (10th Dist.) (“In order to survive a motion to dismiss based on the statute of limitations, facts supporting the application of R.C. 2305.15(A) must be alleged in the complaint.”), citing *Noe v. Smith*, 143 Ohio App.3d 215, 218 (4th Dist. 2000). The trial court would then decide whether the defendants did, in fact, conceal themselves and thus whether R.C. 2305.15 tolled the statute of limitations.

{¶ 36} Given the defendants’ apparent efforts to conceal their names from the website, I believe R.C. 2305.15 could have applied to this matter. Regardless, for the reasoning set forth in the majority opinion, the trial court erred in finding that

Mazur's claims were barred by the statute of limitations. Mazur's claims should not have been dismissed and should be fully adjudicated on remand.

LISA B. FORBES, P.J., DISSENTING:

{¶ 37} Respectfully, I dissent from the majority's conclusion that Mazur's original complaint satisfies the requirements of Civ.R. 15(D) such that the amended complaint relates back to the date of the original filing. I would find that Mazur's original complaint filed on September 23, 2024, did not meet the requirements of Civ.R. 15(D), and that the allegations put forward in Mazur's amended complaint did not relate back to the filing of his original complaint.

{¶ 38} The Supreme Court of Ohio recently reaffirmed that Civ.R. 15(D) “does not authorize a claimant to designate defendants using fictitious names as placeholders in a complaint filed within the statute-of-limitations period and then identify, name, and personally serve those defendants after the limitations period has elapsed.” *Lewis v. MedCentral Health Sys.*, 2025-Ohio-4802, ¶ 9, quoting *Erwin v. Bryan*, 2010-Ohio-2202, paragraph two of the syllabus. In *Erwin*, the Court explained, “To construe the rule to allow the use of placeholders for unidentified defendants would eliminate that statute of limitations for every cause of action. That is not the purpose of Civ.R. 15(D).” *Erwin* at ¶ 4. “Once the claim has accrued, the failure of the plaintiff to learn the identity of an allegedly negligent party does not delay the running of the statute of limitations.” *Erwin* at ¶ 26.

{¶ 39} The *Lewis* Court reiterated that “Civ.R. 15(D) is limited in its application. It applies ‘to those cases in which the defendant’s identity and whereabouts are known to the plaintiff, but the actual name of the defendant is unknown.’” *Id.* at ¶ 13, quoting *Varno v. Bally Mfg. Co.*, 19 Ohio St.3d 21, 24 (1985). *See also Erwin* at ¶ 24.

{¶ 40} Strict compliance with Civ.R. 15(D) is required for an amended complaint to relate back to the original. *See Amerine v. Haughton Elevator Co.*, 42 Ohio St.3d 57 (1989). In *Amerine*, the Court stated unequivocally:

Civ.R. 15(D) specifically requires that the summons *must* be served personally upon the defendant. In this case, service was performed by way of certified mail which is clearly not in accordance with the requirement of Civ.R. 15(D). Civ.R. 15(D) also requires that the summons must contain the words “name unknown.”

(Emphasis in original.) *Id.* at 58, quoting Civ.R. 15. *See also Erwin* at ¶ 25 (Reaffirming the proposition set forth in *Amerine* that “a plaintiff may benefit from the one-year period allowed in Civ. R. 3(A) to perfect personal service upon a fictitiously named defendant if the plaintiff has otherwise complied with Civ.R. 15(D) in filing the complaint.”); *Laneve v. Atlas Recycling*, 2008-Ohio-3921, ¶ 10 (noting that the specific requirements of Civ.R. 15(D) include that the summons must contain the words “name unknown,” and it must be “personally served upon the formerly fictitious, now identified, defendant”). Moreover, “a complaint against a party whose name is unknown must describe the defendant.” *Erwin* at syllabus.

{¶ 41} If the plaintiff complies with Civ.R. 15(D), the action is deemed to have been initiated against the “John Doe” defendants as of the original filing date.

Laneve at ¶ 11 (noting that the substitution of the real name in an amended complaint for the fictitious name in the original complaint does not change the party).

{¶ 42} If the plaintiff fails to comply with Civ.R. 15(D), the amended complaint will not relate back to the filing of the original complaint. *See Erwin* (granting motion for summary judgment where plaintiff filed a John Doe complaint despite actually knowing the defendant doctor's name prior to filing, where plaintiff did not provide a description sufficient to identify the John Doe defendant so as to allow personal service of process, and where plaintiff did not attempt personal service on the fictitiously named defendants); *Purushealth, L.L.C. v. Day Ketterer, L.L.P.*, 2019-Ohio-2002 (8th Dist.) (granting motion to dismiss where, among other things, the plaintiff filed a John Doe complaint despite knowing the names of the defendants at the time of filing, and where plaintiff failed to include the words "name unknown" on the summons or to serve the defendants personally); *Lawson v. Holmes*, 2006-Ohio-2511 (12th Dist.) (granting summary judgment to defendants where plaintiffs failed to comply with Civ.R. 15(D)'s requirement to aver their inability to discover the name of appellee in either the original complaint or the amended complaint).

{¶ 43} I would find that under the precedent established by the Ohio Supreme Court, Mazur did not demonstrate that he complied with Civ.R. 15(D). Mazur used "John Doe" as a placeholder, attempting to extend the statutes of

limitations by filing his original complaint without knowing the defendants' identity or whereabouts.

{¶ 44} I would find that Mazur did not aver that he “could not” discover the identity of the defendants, only that he had not discovered the names of the defendants. In his original complaint, Mazur stated that the “true identities of the Doe Defendants are presently unknown” and that he anticipated “identifying the Doe Defendants through the discovery process.” I appreciate that, in his original complaint, Mazur averred that the Website was published without any contact information and was registered “in a way to hide the owner of the domain name.” Nevertheless, in his amended complaint, Mazur averred that he ascertained the identities of the defendants five months after he filed his original complaint. That is, he was able to identify the defendants quite promptly and offered no explanation of why he could not have done so before filing his original complaint. Again, Mazur did not aver that he could not identify the defendants, only that he had not.

{¶ 45} Furthermore, Mazur did not offer any description of the Doe Defendants other than that he believed they were citizens of Newburgh Heights who owned and operated the Website. This is akin to the description held to be insufficient in *Erwin*. There, the plaintiff described the John Doe defendants as a doctor licensed in Ohio and the doctor's professional corporation and that the doctor's actions caused plaintiff's husband's death. *Erwin*, 2010-Ohio-2202, at ¶ 34.

{¶ 46} Finally, nothing in the record demonstrates that any summons containing the words “name unknown” was issued. Similarly, nothing in the record indicates that a summons and either complaint was served personally on any fictitious defendant or any formerly fictitious, now identified defendant. As in *Erwin*, Mazur did not comply with Civ.R. 15(D).

{¶ 47} I disagree with the majority that it is proper to consider materials attached to a brief in opposition in deciding a motion to dismiss. In considering a motion to dismiss pursuant to Civ.R. 12(B)(6), this court and the trial court are limited to considering the face of the complaint. *Katz v. Univ. Hosps. Health Sys.*, 2022-Ohio-3328, ¶ 18 (8th Dist.) (“Consideration of evidence beyond the four corners of the complaint . . . is beyond a Civ.R. 12(B)(6) motion to dismiss.”); *Graham v. Lakewood*, 2018-Ohio-1850, ¶ 47 (8th Dist.), quoting *Grey v. Walgreen Co.*, 2018-Ohio-6167, ¶ 3 (8th Dist.) (“For a trial court to grant a motion to dismiss for failure to state a claim upon which relief can be granted, it must appear ‘beyond doubt from the complaint that the plaintiff can prove no set of facts entitling her to relief.’”); *NorthPoint Props. v. Petticord*, 2008-Ohio-5996, ¶ 11 (8th Dist.) (“A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. . . . Under a de novo analysis, we must accept all factual allegations of the complaint as true and all reasonable inferences must be drawn in favor of the nonmoving party.”). I would not consider the exhibit attached to Mazur’s opposition brief.

{¶ 48} Courts may, however, take judicial notice of their own dockets. *See Indus. Risk Insurers v. Lorenz Equip. Co.*, 69 Ohio St.3d 576, 580 (1994) (“It is axiomatic that a trial court may take judicial notice of its own docket.”); *Pearson v. Columbus*, 2014-Ohio-5563, ¶ 17 (10th Dist.) (taking judicial notice of the court’s docket to assess service on John Doe defendants). The court’s docket reveals a motion filed by Mazur on February 26, 2025, requesting an extension of time to perfect service, and the court’s order granting him until May 23, 2025, to perfect service. The docket does not include any other information regarding issuance or service of a summons.

{¶ 49} Finally, I would decline to address the novel issue of whether a Civ.R. 4.7 waiver of service of summons is effective to waive the specific requirement of personal service of Civ.R. 15(D). *See Amerine*, 42 Ohio St.3d at 58 (Service by certified mail is not personal service and therefore fails to comply with Civ.R. 15(D)). I would find that Mazur’s failure to meet other requirements of the rule as set forth above dictates the outcome of this case.

{¶ 50} I find the conduct alleged in Mazur’s original and amended complaints to be despicable. And, I am sympathetic to Mazur’s argument that, in this day and age, where “anonymous online defamers can evade identification for years,” more flexibility should be considered and the traditional application of Civ.R. 15(D) should be relaxed. However, the Ohio Supreme Court has spoken on the application of Civ.R. 15(D) and has clearly articulated that it has limited use. Because Mazur did not comply with the requirements of Civ.R. 15(D), I would find

that the amended complaint does not relate back to the filing of his original complaint.