

STATE OF OHIO                     )  
                                              )ss:  
COUNTY OF SUMMIT            )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

DAVID LI, et al.

C.A. No.       31500

Appellants/Cross-Appellees

v.

MIKE GANG DU, et al.

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.     CV-2018-03-1469

Appellees/Cross-Appellants

**DECISION AND JOURNAL ENTRY**

Dated: September 16, 2026

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SUTTON, Judge.

{¶1} Appellants/Cross-Appellees David Li and Cindy Li (“the Lis”) appeal the April 7, 2025 final judgment of the Summit County Court of Common Pleas. Appellees/Cross-Appellants Mike Gang Du and Julie Zheng Zhou (“the Du-Zhous”) cross-appeal the July 25, 2018, October 25, 2023, October 18, 2024, and April 7, 2025 judgments of the Summit County Court of Common Pleas. For the reasons that follow, this Court affirms in part and reverses in part.

I.

**Relevant Background Information**

{¶2} This case and appeal arise from an incident that took place on February 25, 2016, at Revere Middle School when T.L., a minor, threatened<sup>1</sup> to conduct a school shooting. W.B., another student at the middle school, heard T.L.’s remarks and told his father about the threat. W.B.’s father went to the Bath Township Police Department with his son and made a police report

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<sup>1</sup> The Lis deny in this case that their son made a threat.

concerning the statements made by T.L. The police interviewed T.L. the next day at the school, and, according to the police report, T.L. admitted he often thought of death and had thought about bringing a gun to school to shoot other students who have been mean to him over the years, and he would target the cafeteria or gym where there would be a lot of students who are easy targets. The report also stated T.L. admitted he vented his frustrations to his friends during lunch. That same day, the Superintendent of the Revere Local School District sent an email to parents notifying them of a report that a student threatened to bring a weapon to school. In response, Mr. Du sent three emails to staff at Revere Local Schools using three different email addresses he had previously created prior to 2015, all of which were pseudonyms. The email addresses were RDole71@hotmail.com, tsmthpa@hotmail.com, and SwissAA@hotmail.com. In the emails, Mr. Du expressed concern about the safety of the students and recommended the school remove the student who made the threat. Mr. Du also alleged that previous welfare and safety concerns had been expressed about the student. Mr. Du did not sign the emails using his real name because he was concerned about retaliation.

{¶3} As a result of the statements made by T.L., he was expelled from school by the Revere Local School District Board of Education. The Lis are the parents of T.L. The Lis appealed the decision to expel T.L. to the Summit County Court of Common Pleas, which affirmed the decision of the school board in the case *Li v. Revere Local Sch. Dist. Bd. Of Ed.*, Summit County Common Pleas case number CV-2016-05-2184 (“the expulsion case”). The Lis appealed that decision to this Court, which dismissed the appeal as untimely. The Du-Zhous were not parties to nor witnesses in the expulsion case.

{¶4} On March 30, 2018, the Lis, on their own behalf and as guardians of T.L., a minor, filed a complaint against the Du-Zhous alleging defamation and intentional infliction of emotional

distress. The Lis alleged in their complaint that the emails sent by Mr. Du were defamatory and the cause of T.L.’s expulsion from Revere.

{¶5} The Du-Zhous responded to the Lis’ complaint with a counterclaim against the Lis alleging abuse of process and frivolous conduct. The counterclaim specifically alleged that the Lis’ *filing of the complaint against them* was frivolous and an abuse of process. This distinction is important because as the case proceeded in the trial court, the Du-Zhous filed numerous motions alleging additional instances of misconduct by the Lis and their attorneys and sought sanctions against the Lis and their attorneys pursuant to R.C. 2323.51 and Civ.R. 11.

{¶6} The Du-Zhous filed a Civ.R. 12(B)(6) motion to dismiss the Lis’ complaint for failure to state a claim upon which relief can be granted and requested the Lis be sanctioned pursuant to R.C. 2323.51. On July 25, 2018, the trial court granted the Du-Zhous’ motion to dismiss and denied their motion for sanctions. The trial court stated in its order granting the motion to dismiss that the matter had arisen out of an incident that took place in February 2016, “wherein a police report was filed with the Bath Police Department regarding a threat made by Plaintiffs’ child, T.L. As a result of the threat, T.L. was expelled from Revere Middle School.”

{¶7} On October 6, 2018, while the trial court case was pending on the Du-Zhous’ counterclaim, Mr. Li sent an email using Mrs. Li’s email address with numerous attachments to multiple individuals including several parents of Revere students. The email and attachments accused the Du-Zhous of framing T.L. in order to have T.L. expelled from school because he was an academic rival of their son.<sup>2</sup> Specifically, the email stated the Du-Zhous “planned the scheme and fabricated all those [‘Tom Smith,’ ‘Rob Dole,’ and ‘Swisscheese’ emails,]” referring to the emails sent by Mr. Du to Revere staff soon after the reported threats were made by T.L.

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<sup>2</sup> Mr. Li used Mrs. Li’s email address to send the email with her knowledge and permission.

{¶8} The Du-Zhous subsequently amended their counterclaim to include claims for defamation per se and malicious prosecution based on Mr. Li's email. The Du-Zhous' amended counterclaim continued to allege the frivolous conduct claim was based on the Lis' institution of the underlying litigation.

{¶9} The Du-Zhous moved for summary judgment on the issue of liability on their counterclaims for frivolous conduct, abuse of process, defamation, and malicious prosecution. The Lis moved for summary judgment on the Du-Zhous' counterclaims. On October 25, 2023, the trial court granted summary judgment in favor of the Du-Zhous and against the Lis on the Du-Zhous' counterclaim of frivolous conduct, finding on the issue of liability only that the Lis engaged in frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(iii) and (iv). The trial court, however, granted summary judgment in favor of the Lis on the Du-Zhous' counterclaim for frivolous conduct that was based on R.C. 2323.51(A)(2)(a)(i) and (ii). The trial court did not determine damages at that time. The trial court also granted summary judgment in favor of the Lis on the Du-Zhous' counterclaims of malicious prosecution, abuse of process, and defamation.

{¶10} Throughout the trial court proceedings, the Du-Zhous have sought sanctions against the Lis and the Lis' attorneys J. Reid Yoder and Kyle Johnson and their law firms pursuant to Civ.R. 11 and R.C. 2323.51 for the filing of the Lis' complaint and for conduct that occurred during the pendency of the trial court matter. The trial court denied all of the Du-Zhous' motions for sanctions.

{¶11} On November 18, 2024, the trial court held a hearing to determine the amount of damages on the Du-Zhous' successful counterclaim for frivolous conduct against the Lis. On April 7, 2025, the trial court awarded damages to the Du-Zhous in the amount \$37,208.50, which

consisted of \$34,642.00 in attorney fees and \$2,567.50 in expert fees incurred by the Du-Zhous as a result of the Lis' frivolous conduct.

{¶12} The Lis have appealed and have set forth four assignments of error for our review in their "Statement of Assignments of Error" portion of their brief. The Du-Zhous have cross-appealed raising six cross-assignments of error for our review. To facilitate our analysis, we will consider the assignments of error out of order and have grouped some assignments of error.

## II.

### **The Du-Zhous' Counterclaim for Frivolous Conduct**

#### **THE LIS' ASSIGNMENT OF ERROR II**

**THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON [THE DU-ZHOUS'] COUNTERCLAIM FOR SANCTIONS UNDER R.C. 2323.51 BY RELYING ON FACTUAL FINDINGS IN CASE NO. CV-2016-05-2184 THAT DID NOT HAVE A PRECLUSIVE EFFECT IN THE PRESENT LITIGATION.**

#### **THE DU-ZHOUS' CROSS-ASSIGNMENT OF ERROR II**

**THE TRIAL COURT ERRED IN ITS SUMMARY JUDGMENT ORDER WHEN IT DECLINED TO CONSIDER ANY CLAIMS FOR FRIVOLOUS CONDUCT BASED ON [R.C. 2323.51(A)(2)(a)(i) AND (ii)] BECAUSE IT HAD REJECTED THEM FIVE YEARS EARLIER.**

{¶13} The Lis argue in their second assignment of error that the trial court erred in granting summary judgment in favor of the Du-Zhous on the Du-Zhous' counterclaim for frivolous conduct in violation of R.C. 2323.51(A)(2)(a)(iii) and (iv.). The Du-Zhous argue in their second cross-assignment of error that the trial court erred in granting summary judgment in favor of the Lis on Du-Zhous' counterclaim against the Lis for frivolous conduct in violation of R.C. 2323.51(A)(2)(a)(i) and (ii). In other words, the Lis argue they should not be liable on the frivolous conduct counterclaim at all, and the Du-Zhous argue the Lis should be liable for frivolous conduct pursuant to all four subparts of R.C. 2323.51(A)(2)(a).

{¶14} R.C. 2323.51(A) provides in relevant part:

(2) "Frivolous conduct" means either of the following:

(a) Conduct of . . . [a] party to a civil action . . . or . . . [a] party's counsel of record that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

{¶15} This Court reviews an award of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996). Summary judgment is appropriate under Civ.R. 56 when: (1) no genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327 (1977), citing Civ.R. 56(C). A court must view the facts in the light most favorable to the non-moving party and must resolve any doubt in favor of the non-moving party. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358-359 (1992). The party moving for summary judgment bears the initial burden of informing the trial court of the basis for the motion and pointing to parts of the record that show the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). Specifically, the moving party must support the motion by pointing to some evidence in the record

of the type listed in Civ.R. 56(C). *Id.* Once a moving party satisfies its burden of supporting its motion for summary judgment with acceptable evidence pursuant to Civ.R. 56(C), Civ.R. 56(E) provides that the non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings. *Id.* at 293. Rather, the non-moving party has a reciprocal burden of responding by setting forth specific facts, demonstrating that a "genuine triable issue" exists to be litigated at trial. *State ex rel. Zimmerman v. Tompkins*, 75 Ohio St.3d 447, 449 (1996).

{¶16} In their second assignment of error, the Lis argue the trial court erred by relying on findings of fact from the expulsion case when it granted summary judgment in favor of the Du-Zhous on their counterclaim for frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(iii) and (iv). We agree. The Du-Zhous were not parties to the expulsion case and therefore, the findings of fact in that case cannot be used as *res judicata* in this case. "Res judicata" includes the concept of issue preclusion. *Robinholt v. Wilson*, 2023-Ohio-248, ¶ 13 (9th Dist.), quoting *Huber v. Inpatient Med. Servs., Inc.* 2018-Ohio-4686, ¶ 9 (9th Dist.). The doctrine of issue preclusion holds that a fact that was actually and directly at issue in a previous action and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action *between the same parties or their privies*. (Emphasis added.) *Glidden Co. v. Lumbersmens Mut. Cas. Co.*, 2006-Ohio-6553, ¶ 44, quoting *Fort Frye Teachers Assn., OEA/NEA v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395 (1998).

{¶17} Because the trial court quoted extensively from the decision in the expulsion case in granting summary judgment in favor of the Du-Zhous, it is clear that the trial court believed the findings of fact from that case had a preclusive effect in this case. But because the Du-Zhous were not a party to the expulsion case, the findings of fact in the expulsion decision could not be used in this case, and the trial court erred in granting summary judgment on that basis.

{¶18} In addition, in conducting our de novo review, we have reviewed the evidence submitted in support of the Du-Zhous' motion for summary judgment. It was incumbent on the Du-Zhous to point to evidence admissible pursuant to Civ.R. 56 to establish that there was no genuine issue of material fact concerning whether the Lis' conduct in filing the complaint was frivolous.

{¶19} Civ.R. 56(C) provides in relevant part:

Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.

{¶20} Upon review, we determine that the Du-Zhous did not meet their burden to establish that there is no genuine issue of material fact concerning whether the Lis' conduct was frivolous. Here, we are not determining that the Lis' conduct in filing the complaint was not frivolous, only that the Du-Zhous did not establish with evidence allowed by Civ.R. 56(C) that there is no genuine issue of fact concerning whether the Lis' conduct was frivolous and that the trial court erred by treating findings of fact in a separate case to which the Du-Zhous were not parties as res judicata.

{¶21} The trial court also granted summary judgment in favor of the Lis on a portion of the Du-Zhous' counterclaim for frivolous conduct, specifically that the conduct violated R.C. 2323.51(A)(2)(a)(i) and (ii). The trial court's explanation for doing so was "the argument set forth in the [Du-Zhous'] Motion for Summary Judgment relies upon the same facts and law (insofar as it relates to R.C. [2323.51(A)(2)(a)(i) and (ii)]) which was previously rejected by the [c]ourt.

Therefore, this [c]ourt declines to address any arguments raised pursuant to R.C. 2323.51(A)(2)(a)(i) and (ii).”

{¶22} It appears that the trial court did not engage in a review and analysis of the parties’ evidence submitted in connection with their respective motions for summary judgment when granting summary judgment in favor of the Lis and against the Du-Zhous on the Du-Zhous’ counterclaim for frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(i) and (ii) but instead relied on its previous pre-summary judgment orders. Because the trial court did not refer to any Civ.R. 56(C) evidence when granting summary judgment in favor of the Lis and against the Du-Zhous on the portion of the Du-Zhous’ counterclaim for frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(i) and (ii), but instead referred only to its prior decisions on the Du-Zhous’ motions for sanctions, we determine the trial court erred.

{¶23} Therefore, there remain genuine issues of material fact concerning the entirety of the Du-Zhous’ counterclaim against the Lis for frivolous conduct. The Lis’ second assignment of error and the Du-Zhous’ second cross-assignment of error are sustained.

### **The Du-Zhous’ Counterclaim for Defamation**

#### **CROSS-ASSIGNMENT OF ERROR I**

##### **THE TRIAL COURT ERRED IN ITS SUMMARY JUDGMENT ORDER IN FINDING THAT THE STATEMENTS PUBLISHED BY THE LIS WERE NOT DEFAMATORY *PER SE*.**

{¶24} In their first cross-assignment of error, the Du-Zhous argue the trial court erred granting summary judgment in favor of the Lis on the Du-Zhous’ counterclaim for defamation. The Du-Zhous alleged in their amended counterclaim that the Lis defamed them when Mrs. Li sent an email falsely accusing the Du-Zhous of setting up T.L in order to “frame” him and “plan[ning] the scheme and fabricat[ing]” Mr. Du’s emails to school officials that had expressed

concern over T.L.'s threat to conduct a school shooting. In his deposition, Mr. Li took responsibility for sending the email using his wife's email address. The Du-Zhous' counterclaim alleged these statements constituted defamation per se. The Lis argued in their motion for summary judgment that the statements in the email were not false, were made with qualified privilege, and were not defamatory per se.

{¶25} Defamation is a false statement that injures a person's reputation. *Gosden v. Louis*, 116 Ohio App.3d 195, 206 (9th Dist. 1996). In addition, the statement must be made without privilege to a third party. *Northeast Ohio Elite Gymnastics Training Ctr., Inc. v. Osborne*, 2009-Ohio-2612, ¶ 7 (9th Dist.). A statement is actionable as defamation per se if it: (1) alleges an indictable criminal offense involving moral turpitude; (2) imputes a loathsome or contagious disease that would exclude a person from society; (3) tends to injure a person in his trade or occupation; or (4) tends to subject a person to public hatred, ridicule, or contempt. *Dunnigan v. City of Lorain*, 2002-Ohio-5548, ¶ 35 (9th Dist.); *Gosden* at 207. When not ambiguous, whether a statement is defamation per se is a question of law for the trial court to determine. *Gosden* at 207.

{¶26} Qualified privilege is an affirmative defense to a claim of defamation. *Hill v. Ohio Dept. of Rehab. and Corr.*, 2021-Ohio-561, ¶ 17 (10th Dist.). Where found, it does not absolutely immunize statements from liability but instead subjects the party claiming defamation to a heightened proof requirement. *Hahn v. Kotten*, 43 Ohio St.2d 237, 243, 248 (1975). To overcome the defense of qualified privilege, a party must show that the subject communication was made with actual malice, meaning that the speaker knew it was false or recklessly disregarded the truth. *Jacobs v. Frank*, 60 Ohio St.3d 111, 118 (1991).

{¶27} There is no dispute that the statements in Mr. Li’s email and attachments were published. Thus, the issues for this assignment of error are whether there are genuine issues of material fact that the statements in the email and attachments were false and made without privilege, and whether or not the statements, as a matter of law, constituted defamation per se.

{¶28} In his email to Revere parents, Mr. Li stated:

Dear fellow Revere parents,

I’d like to thank you for your support for [T.L.] and let you know that we will never forget. Since the incident occurred we’ve never given up pursuing the truth. Now it is clear that many people’s belief is right.

We have unearthed evidence that [Mr. Du’s emails were] a set up devised by [the Du-Zhou] family to frame [T.L.]. It took us over one and a half years of investigation to unearth the fact that the [Du-Zhou] family planned the scheme and fabricated all those “Tom Smith”, “Rob Dole”, and “Swisscheese” emails.

The attached document was distributed to Revere [School] District members at a recent IEP team meeting. It is a summary of the related facts and evidence.

{¶29} Attached to Mr. Li’s email was a memorandum to T.L.’s “IEP Team” titled, “Some Related Information,” which stated that Mr. Du admitted to lying in his emails and accused the Du-Zhous of preparing the emails before “the incident.” The memorandum referred to further attachments, also sent with Mr. Li’s email, which included part of the police report by the Bath Township Police Department, the email sent by the Revere superintendent notifying parents that a “student had threatened to bring a weapon to school,” and the emails sent by Mr. Du under pseudonyms to school officials expressing concern about school safety and asking the school to remove the individual who made the threat.

{¶30} The Du-Zhous argue the following specific statements made by Mr. Li in the email and attachments are defamatory per se:

- We have unearthed evidence that it was a set up devised by [T.D.]’s family to frame [T.L].

- It took us over one and a half years of investigation to unearth the fact that [T.D.]’s family planned the scheme and fabricated all those “Tom Smith,” Rob Dole,” and “Swisscheese” emails.
- [W.B. and his father] asked to have their “identities hidden.” Tom Smith et al were using a more devious way that would shock ordinary people’s conscience.
- [W.B.’s family] and the [Du-Zhou] families are the only two parties in the whole world that alleged [T.L.] made threats in the past, contradicting all records and evidence, including those of Revere.
- [Mr. Du] came “up with the fake names and email addresses, set up the email accounts with the fake names.”
- Those who have knowledge of them unanimously believe that the emails were prepared before the incident by [T.D.] and his parents.
- [T]here was zero parent concerned and the only explanation would be a set up scheme.

{¶31} The trial court found Mr. Li’s email did not accuse the Du-Zhous of any particular crime and there is “no such crime known as a ‘setup scheme’ within the plain meaning of those words.” We agree with the trial court in this regard.

{¶32} The trial court went on to find the email does not state *what* the Lis accuse the Du-Zhous of scheming to set up. The email only refers to “the incident” and purports to describe “some of ‘the forces that brought the situation to [T.L.]’.” The trial court further found that “the act of creating an email address or planning a course of action to accuse another person of an action does not subject anyone to public hatred, ridicule or contempt on its face; therefore the Lis’ email is not defamatory per se.” However, a review of the attachments to that email makes clear what the scheme was the Du-Zhous were accused of setting up. The Lis accused the Du-Zhous of pre-planning and taking steps to carry out a scheme to set up or frame the Lis’ teenage son in order to have him, an academic rival of the Du-Zhous’ son, expelled from school.

{¶33} Such accusations would tend to subject the Du-Zhous to public hatred, ridicule, contempt, or damage to reputation, and are actionable if Mr. Li’s statements are false and made without privilege. The Sixth District Court of Appeals determined that a complaint that alleged that a plaintiff intentionally overpaid an employee and “subjected [the plaintiff] to damage to his

reputation, public contempt, ridicule, shame, and disgrace” sets forth all the elements for a defamation per se action. *Johnson v. Port Clinton*, 2025-Ohio-3100, ¶ 31 (6th Dist.). Statements in a flyer that a business has a long history of racial profiling and discrimination have been found by a trial court to be defamatory per se and this Court affirmed the judgment of the trial court denying the defendant’s motion for judgment notwithstanding the verdict. *Gibson Bros., Inc. v. Oberlin College*, 2022-Ohio-1079, ¶ 32, 89, 133 (9th Dist.).

{¶34} As Chief Justice O’Connor observed in her dissent in *Wayt v. DHSC, L.C.C.*, 2018-Ohio-4822, ¶ 40:

a person’s reputation is separate from her or his body, and the person has little control over it - reputation exists entirely in the hearts and minds of others. The lack of control over one’s own reputation is one reason that the tort of defamation is so menacing. A person can be of upstanding character, yet when someone defames her or him, there is no well-defined solution for piecing reputation back together or even for determining the damage. A reputation damaged by defamation is not fixed by mending it; one can only attempt to repair reputation by convincing each and every person who observed the defamatory statement that it is not true. It is often nearly impossible to determine whether reputation is restored or to quantify the damage. In part, that is why a victim of defamation per se, that is, defamation that is clear on its face, does not have to prove damages. *Becker v. Toulmin*, 165 Ohio St. 549, 553, 138 N.E.2d 391 (1956).

{¶35} Mr. Li’s accusations tend to subject the Du-Zhous to public hatred, ridicule, or contempt and are actionable if Mr. Li’s statements are false and made without privilege. The trial court, however, did not reach the issues of the truth or falsity of the statements or qualified privilege. Therefore, we only determine that the statements in Mr. Li’s email and attachments, if false and made without privilege, could constitute defamation per se. It is up to the trier of fact to determine whether in the first instance the statements were false, and if so, whether the statements were made without privilege.

{¶36} The Lis argue that because Mr. Li sent the emails using his wife’s email account, and there is no evidence that Mrs. Li and T.L participated in writing and sending the email,

summary judgment in favor of Mrs. Li and T.L. was appropriate as there is no genuine issue of material fact that Mrs. Li and T.L. did not publish the defamatory statements. The Du-Zhous have conceded that they are not making any claims against T.L. The Du-Zhous argue that Mrs. Li testified in her deposition that she agreed with her husband sending the email using her email address and under her signature. Mrs. Li denied writing or even reading the email and many of the attachments before they were sent. The Du-Zhous argue that nevertheless, Mrs. Li is liable for the statements in the email, citing *Murray v. Knight-Ridder, Inc.*, 2004-Ohio-821, ¶ 104 (7th Dist.) (“[a]ny act by which a defamatory statement is communicated to a third party is a publication[,]” and a person who requests, procures, or abets in the publication of defamatory material is liable.) This Court is not convinced that *Murray* can be applied here. In *Murray*, the issue was whether a newspaper publisher was liable for an alleged defamatory article written by a reporter for the newspaper. In this case, the issue is whether a wife can be liable for specific alleged defamatory statements sent by her husband on an email account they share. Liability for the publication of defamation must be predicated on a positive act. *Scott v. Hull*, 22 Ohio App.2d 141, 144 (3d Dist. 1970). We therefore conclude that there is at least a genuine issue of material fact concerning whether Mrs. Li published, or requested, procured, or abetted the publication.

{¶37} Accordingly, the Du-Zhous’ first cross-assignment of error is sustained.

#### **CROSS-ASSIGNMENT OF ERROR IV**

**THE TRIAL COURT ERRED IN DENYING SANCTIONS WITH ITS  
DISMISSAL ON JULY 25, 2018, AND IN REFUSING TO CONSIDER [R.C.  
2323.51(A)(2)(a)(i) AND (ii)] AT ANY POINT IN THIS LITIGATION.**

#### **The Motion to Dismiss Complaint**

{¶38} On May 21, 2018, the Du-Zhous filed a motion to dismiss the Lis’ complaint pursuant to Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted. In their

motion, the Du-Zhous also moved for sanctions against the Lis for frivolous conduct pursuant to R.C. 2323.51(A)(2)(a). The Du-Zhous argued because the Lis had received “a [c]ourt’s final ruling on the cause and propriety of T.L.’s expulsion five months before [the] Complaint was filed, the filing constitutes an abuse of process and frivolous conduct and should be sanctioned.” In denying the Du-Zhous’ motion for sanctions against the Lis, the trial court simply stated, “[the Du-Zhous’] Motion for Sanctions is **DENIED.**” (Emphasis in original).

{¶39} The Du-Zhous however, asserted a counterclaim against the Lis for the exact same frivolous conduct they alleged in their motion to dismiss. The trial court denied the motion for sanctions at the Civ.R. 12(B)(6) stage of the proceedings, when the evidence had not yet been developed in the way it was when motions for summary judgment were filed. Thus, we determine the trial court did not err by not awarding sanctions to the Du-Zhous in connection with its decision granting their motion to dismiss the Lis’ complaint.<sup>3</sup>

{¶40} While the Du-Zhous argue in this cross-assignment of error that the trial court erred in refusing to consider R.C. 2323.51(A)(2)(a)(i) and (ii) sanctions at any point in this litigation, they have not pointed to the refusals to which they are referring *in this cross-assignment of error*. This cross-assignment of error discusses only the complaint, and briefly, the actions of Attorney Yoder before filing the complaint. The Du-Zhous have alleged other instances of frivolous conduct elsewhere in their brief, and those arguments will be addressed in our analysis of those cross-assignments of error.

{¶41} Accordingly, the Du-Zhous’ fourth cross-assignment of error is overruled.

### **CROSS-ASSIGNMENT OF ERROR V**

**THE TRIAL COURT ERRED IN DENYING SANCTIONS IN ITS  
OCTOBER 18, 2024 [] DECISION.**

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<sup>3</sup> The Lis have not assigned as error the dismissal of their complaint.

{¶42} On February 11, 2024, the Du-Zhous again moved for sanctions against the Lis pursuant to R.C. 2323.51(A)(2)(a)(i)-(iv), and also against two of the Lis' attorneys and their law firms, Attorney J. Reid Yoder and Attorney Kyle Johnson, pursuant to R.C. 2323.51 and Civ.R. 11. The trial court held a hearing on the motion and denied the motion for sanctions in an October 18, 2024 order.

{¶43} On appeal, as it relates to their February 11, 2024 motion, the Du-Zhous focus on the following conduct that they deem to be sanctionable:

1. Pleadings reiterating false storylines, which included the filing of the complaint, the motion for reconsideration, the motion to amend their complaint, the motion to strike the Du-Zhous' amended counterclaim;
2. Answers to interrogatories in which the Lis deny that T.L. threatened to conduct a school shooting;
3. Subpoena issued to the Du-Zhous' minor children;
4. Depositions to aid the Lis in their federal case against Revere;
5. Interfering with the subpoena for the Lis' forensic audit of Mrs. Li's phone; and
6. The Lis' motion to disqualify the Du-Zhous' counsel and efforts to disbar counsel.

{¶44} In its order denying the February 11, 2024 motion for sanctions, the trial court stated in a footnote that because it had already found frivolous conduct by the Lis in its order granting the Du-Zhous' motion for summary judgment, it would not readdress the issue as it relates to the Lis. To the extent that the February 11, 2024 motion targets the Lis' filing of the complaint against the Du-Zhous, that is the same conduct alleged to be frivolous conduct in the counterclaim. Because we are reversing the grant of summary judgment on the frivolous conduct counterclaim, this particular issue is premature. However, the motion also targets conduct on the part of the Lis' in addition to what was alleged in the Du-Zhous' counterclaim. The February 11, 2024 motion

also concerned conduct by the Lis during the course of the litigation. Therefore, we sustain the Du-Zhous' fifth assignment of error as it pertains to the Lis' alleged frivolous conduct for filing the motion for reconsideration, the motion to amend the complaint, the motion to strike the Du-Zhous' amended counterclaim, several answers to interrogatories, subpoenas issued to the Du-Zhous' minor children; conducting depositions to allegedly aid the Lis in their federal case against Revere, allegedly interfering with the subpoena for the Lis' forensic audit of Mrs. Li's phone, and attempting to disqualify the Du-Zhous' attorney. We stress here that we are not deciding that these actions constitute frivolous conduct, only that the trial court must decide in the first instance if these actions on the part of the Lis constitute frivolous conduct.

{¶45} We will now turn our attention to the conduct of the attorneys, as that was addressed by the trial court in its October 18, 2024 order.

{¶46} “R.C. 2323.51 and Civ.R. 11 both address the filing of frivolous claims.” *Dietrich v. Core*, 2023-Ohio-1463, ¶ 10 (9th Dist.), quoting *In re Guardianship of Bakhtiar*, 2018-Ohio 1764, ¶ 17 (9th Dist.). “The statute and rule differ in that the statute employs an objective test for frivolous conduct while the rule employs a subjective one.” *Dietrich* at ¶ 10, citing *Kozar v. Bio Medical Applications of Ohio, Inc.*, 2004-Ohio-4963, ¶ 16 (9th Dist.). “R.C. 2323.51 also has a broader reach than Civ.R. 11, as it permits a court to impose sanctions ‘against a party, the party’s counsel of record, or both.’” *P.N. Gilcrest Ltd. Partnership v. Doylestown Family Practice, Inc.*, 2011-Ohio-2990, ¶ 32 (9th Dist.), quoting R.C. 2323.51(B)(4); compare Civ.R. 11 (allowing courts to impose sanctions only against the filing attorney or pro se party).

### **Civ.R. 11**

{¶47} Civ.R. 11 “requires an attorney to sign all pleadings and further provides that the signature constitutes a warrant that there is good ground for the action.” *Clark v. Corwin*, 2015-

Ohio-4469, ¶ 11 (9th Dist.), quoting *Heron Point Condominium Unit Owner's Assn. v. E.R. Miller, Ltd.*, 2012-Ohio-2171, ¶ 33 (9th Dist.). If an attorney willfully violates the rule, the court may issue sanctions. Civ.R. 11. Before a court imposes sanctions under Civ.R. 11, “it must consider whether the attorney who signed the document (1) read it; (2) harbored good grounds to support it to the best of his or her knowledge, information, and belief; and (3) did not file it for the purpose of delay.” *Lable & Co. v. Flowers*, 104 Ohio App.3d 227, 235 (9th Dist. 1995). Civ.R. 11 employs a subjective test for frivolous conduct. *Dietrich* at ¶ 10. The relevant inquiry is whether the attorney had a good faith belief to support the pleading. *Woods v. Savannah Foods & Indus.*, 1993 WL 49796, \*7 (6th Dist. Feb. 26, 1993).

{¶48} A decision regarding sanctions under Rule 11 is generally reviewed for an abuse of discretion, but questions that are purely legal – such as whether there are good grounds to support a filing – are reviewed de novo. *Callahan v. Akron Gen. Med. Ctr.*, 2009-Ohio-5148, ¶ 25 (9th Dist.). An abuse of discretion implies that the court’s attitude is unreasonable, arbitrary, or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

### **R.C. 2323.51**

{¶49} Ohio’s frivolous conduct statute is codified in R.C. 2323.51. This measure was enacted by the General Assembly in 1987, rectifying many of the shortcomings of Civ.R. 11. “Conduct” includes “the filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action[.]” R.C. 2323.51(A)(1)(a). Thus, the duties imposed reach beyond the mere filing of a pleading. And again, the definition of frivolous conduct includes conduct that obviously serves merely to harass or maliciously injure another party to the civil

action or is for another improper purpose, including causing unnecessary delay or a needless increase in the cost of litigation; is not warranted under existing law, consists of allegations or other factual contentions that have no evidentiary support; or consists of denials or factual contentions that are not warranted by the evidence. R.C. 2323.51(A)(2)(a).

{¶50} “R.C. 2323.51 does not purport to punish an attorney for failing on a claim.” *Oehler v. McAdams*, 2019-Ohio-1976, ¶ 12 (9th Dist.). “Rather, it addresses conduct that serves to harass or maliciously injure the opposing party in a civil action or is unwarranted under existing law and for which no good-faith argument for extension, modification, or reversal of existing law may be maintained.” *Oehler* at ¶ 12, quoting *Harold Pollock Co., L.P.A. v. Bishop*, 2014-Ohio-1132, ¶ 19 (9th Dist.), quoting *Indep. Taxicab Assn. of Columbus, Inc. v. Abate*, 2008-Ohio-4070, ¶ 22 (10th Dist.). In other words, the statute is designed to deter egregious conduct. *See Oehler* at ¶ 12.

{¶51} “This Court’s standard of review is subject to which part of the analysis is at issue on appeal.” *In re Guardianship of Bakhtiar*, 2018-Ohio-1764, at ¶ 19. A trial court’s factual findings will not be overturned if they are supported by competent, credible evidence. *S & S Computer Sys., Inc. v. Peng*, 2002-Ohio-2905, ¶ 9 (9th Dist.). We review questions of law, such as whether a claim is warranted under existing law, de novo. *Jefferson v. Creveling*, 2009-Ohio-1214, ¶ 16 (9th Dist.); *City of Lorain v. Elbert*, 1998 WL 195724, \*2-3 (9th Dist. Apr. 22, 1998). Finally, we review a decision whether to impose sanctions for improper conduct under an abuse of discretion standard. *P.N. Gilcrest Ltd. Partnership v. Doylestown Family Practice, Inc.*, 2011-Ohio-2990, ¶ 29 (9th Dist.). In doing so, we observe that “[t]he trial judge, of course, will have had the benefit of observing the entire course of proceedings and will be most familiar with the parties and attorneys involved. Consequently, a finding as to the commission of frivolous conduct is entitled to substantial deference upon review.” *Ceol v. Zion Indus., Inc.*, 81 Ohio App.3d 286,

292 (9th Dist. 1992). And, “[w]hen determining whether conduct is frivolous pursuant to R.C. 2323.51, courts must be careful not to deter legitimate claims. . . The test to determine whether a claim is frivolous is whether no reasonable lawyer would have brought the action in light of existing law.” (Internal quotations and citations omitted.) *State ex rel. Chrisman v. Clearcreek Twp.*, 2014-Ohio-252, ¶ 10 (12th Dist.).

{¶52} Now that we have set forth the applicable standards of review, we turn to the specific allegations against the attorneys.

### **Attorney Yoder**

{¶53} The Du-Zhous alleged that Attorney Yoder engaged in frivolous conduct by: filing the initial complaint, the motion to reconsider the dismissal of the complaint, the motion to amend the complaint, the motion to strike the Du-Zhous’ amended counterclaim; certain answers to the Du-Zhous’ interrogatories; subpoenaing the Du-Zhous’ minor children and filing a brief in opposition to the Du-Zhous’ motion to quash the subpoena; attempting to disqualify and disbar the Du-Zhous’ attorney; and interfering with a subpoena issued by the Du-Zhous to the Lis’ forensic expert.

{¶54} In declining to impose sanctions against Attorney Yoder, the trial court observed that the appeal of the expulsion case was not dismissed until June 6, 2018, over two months after the Lis’ March 30, 2018 complaint was filed in this case. The trial court further found that the Du-Zhous failed to present sufficient evidence that Attorney Yoder’s filing of the complaint and motion for reconsideration of the Civ.R. 12(B)(6) dismissal of the complaint constituted frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(iii) and (iv), and that he was acting as a reasonable lawyer in filing the motion for reconsideration and motion to amend the complaint. The trial court further found that Attorney Yoder’s actions in filing the Lis’ complaint and the motion for

reconsideration of the dismissal of the Lis' complaint and motion to amend the complaint did not violate Civ.R. 11 given the time frame of these filings. There was an appeal pending in the expulsion case when the complaint was filed, and by the time Attorney Yoder filed the motion for reconsideration and motion to amend the complaint, the Du-Zhous had filed a counterclaim against the Lis. The trial court found no evidence that Attorney Yoder did not read the pleadings or did not have grounds to support the filing of the pleadings, nor was there evidence that the filings were intended to delay the proceedings. The trial court found that Attorney Yoder's actions were not frivolous in nature related to the interrogatory answers, he had reasonable bases for the pleadings he filed and further found no bad faith on the part of Attorney Yoder. The trial court was "unpersuaded that Attorney Yoder's conduct was willful rather than negligent to meet the standard under Civ.R. 11." The trial court found the Du-Zhous failed to present any objective evidence to support a finding that the subpoena of T.D., the Du-Zhous' minor son, was frivolous as defined by R.C. 2323.51(A)(2)(a)(iii) and (iv). Regarding the Du-Zhous' claim that Attorney Yoder frivolously interfered with their subpoena to the Lis' expert, the trial court found that while "the circumstances surrounding Mrs. Li's cell phone were extremely contentious to all parties[.]" the Du-Zhous failed to establish objective evidence of frivolous conduct pursuant to R.C. 2323.51(A)(2)(a)(iii) and (iv). The trial court specifically noted that Attorney Yoder raised defenses to the subpoena, including privilege, and while Attorney Yoder was eventually unsuccessful in having the subpoena quashed, R.C. 2323.51 does not purport to punish, rather it addresses egregious conduct.

### **Attorney Johnson**

{¶55} As for Attorney Johnson, the Du-Zhous alleged that Attorney Johnson violated R.C. 2323.51 and Civ.R. 11: by making certain statements regarding the forensic analysis of Mrs. Li's

cell phone, by filing the Lis' amended answer; and by deposing several witnesses. It is important to note that Attorney Johnson began representing the Lis in 2021, after the Lis' complaint had been dismissed and after the Du-Zhous' amended counterclaim was filed. Therefore, Attorney Johnson's role was defending the Lis against the amended counterclaim, not prosecuting a complaint against the Du-Zhous.

{¶56} The trial court stated that the Du-Zhous' argument concerning the forensic analysis of Mrs. Li's phone was "part and parcel of the grievance and disbarment proceedings," and declined to revisit the issue as it was moot.

{¶57} As for Attorney Johnson's filing of the Lis' answer to the Du-Zhous' amended counterclaim, the Du-Zhous take issue with Attorney Johnson for asserting truth as a defense to the Du-Zhous' counterclaims and denying what they deem well-established facts. The trial court found there was insufficient evidence to support that Attorney Johnson denied facts already in evidence, but rather, in an effort to defend his clients against the Du-Zhous' counterclaims, he provided answers related to the Du-Zhous' allegations. The trial court further stated, "[h]ere, the question is whether Attorney Johnson had a reasonable basis for answers provided in the Lis' Amended Answer[,] and observing, "[i]t is not frivolous conduct for an attorney to reasonably rely on the representation of his or her client[.]" and the evidence supports a reasonable basis for the answers. Turning to Civ.R. 11, the trial court found no evidence to indicate Attorney Johnson did not read the pleadings or have grounds to support filing the answers, or that the filings were intended to delay the proceedings. The trial court stated, "[i]n fact, it is the [Du-Zhous'] counterclaim and amended counterclaim which continue to be litigated in this matter, not the answers to those filings."

{¶58} The Du-Zhous also argue that Attorney Johnson’s depositions of two Bath police officers, the Bath chief of police, W.B., the student who overheard T.L.’s statements at the lunch table, and W.B.’s father were frivolous conduct. Attorney Johnson argued that the depositions were necessary to the Lis’ defense against the Du-Zhous’ counterclaim for defamation. The trial court agreed and found no frivolous conduct related to the depositions and no violation of Civ.R. 11. The trial court observed that the Du-Zhous’ counterclaim and amended counterclaim required the Lis to defend against the Du-Zhous’ assertions and resulted in “the exhaustive rehashing of events in this case.”

### **Analysis**

{¶59} As the trial court repeatedly noted, the Lis’ complaint against the Du-Zhous was dismissed on July 25, 2018. The parties have engaged in approximately eight years of litigation since that time. Specific to this assignment of error, Attorneys Yoder and Johnson have been defending their clients against the Du-Zhous’ counterclaims. It is apparent there is fierce disagreement among the parties. The Lis assert that Mr. Du’s emails sent under pseudonyms resulted in their son’s expulsion from school. The Du-Zhous assert the Lis initiated this litigation to harass them. In the midst of this contentious litigation, the attorneys are doing their jobs, zealously representing their respective clients.

{¶60} This Court has reviewed the extensive record in this extremely contentious case. Upon review, using the applicable standards of review, we cannot conclude the trial court erred in denying the Du-Zhous’ motion for sanctions against Attorneys Yoder and Johnson.

{¶61} We are sustaining this assignment of error regarding the allegations of frivolous conduct on the part of the Lis, as set forth above, and overruling the assignment of error as it pertains to the Lis’ attorneys. Again, this is not because we decide the Lis’ conduct as alleged in

the Du-Zhous' February 11, 2024 motion for sanctions was frivolous. We only decide that the trial court must in the first instance address those allegations as the allegations concern different conduct than was alleged in the Du-Zhous' counterclaim for frivolous conduct, and the analysis will necessarily take into account the motivations and knowledge of the Lis *during the course of the litigation*.

{¶62} Accordingly, the Du-Zhous' fifth cross-assignment of error is sustained in part and overruled in part.

### **CROSS-ASSIGNMENT OF ERROR III**

**THE TRIAL COURT ERRED IN ITS SUMMARY JUDGMENT ORDER WHEN IT LIMITED ITS FINDING OF FRIVOLOUS CONDUCT (a) TO THE LIS; (b) TO THE FIRST TIME THE FALSE ALLEGATIONS WERE MADE; AND (c) TO THE THIRD TIME THE FALSE DENIALS WERE MADE, PURSUANT TO [R.C. 2323.51(A)(2)(iii) AND (iv)].**

{¶63} The trial court limited its decision in its grant of summary judgment on the Du-Zhous' counterclaim for frivolous conduct, because the counterclaim was filed against the Lis based on the Lis' complaint, not on conduct that occurred subsequent to the complaint or conduct by other persons. The Du-Zhous chose to bring frivolous conduct as a *counterclaim* against the Lis based on alleged false claims in the Lis' complaint and chose to separately file numerous *motions for sanctions* for frivolous conduct against the Lis and their attorneys for various alleged instances of misconduct and abuses. While our disposition of the Lis' second assignment of error might render this assignment of error moot, we think it is important to underscore the difference between the Du-Zhous' counterclaim for frivolous conduct and their motions for sanctions for frivolous conduct, as those filings target both the initial filing of the complaint by the Lis and their attorneys as well as additional acts at different points during the litigation. The counterclaim for frivolous conduct concerns what the Lis knew when they filed the complaint. Therefore, while we

are sustaining the Lis' second assignment of error as to the granting of summary judgment on the Du-Zhous' counterclaim for frivolous conduct, the trial court did not err in limiting its analysis of the Du-Zhous' counterclaim for frivolous conduct to the Lis and to the allegedly false claims in the Lis' complaint. That was the basis for the counterclaim for frivolous conduct.

{¶64} Accordingly, the Du-Zhous' third cross-assignment of error is overruled.

#### **ASSIGNMENT OF ERROR I**

**THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT ON THE COUNTERCLAIM OF [THE DU-ZHOUS] FOR SANCTIONS UNDER R.C. 2323.51 BY RELYING UPON FACTUAL ASSERTIONS THAT WERE NOT RAISED IN [THE DU-ZHOUS'] MOTION FOR SUMMARY JUDGMENT.**

#### **ASSIGNMENT OF ERROR III**

**THE TRIAL COURT ERRED IN FINDING THAT THE LIS ENGAGED IN FRIVOLOUS CONDUCT DESPITE EVIDENCE IN THE RECORD SUPPORTING THE LIS' FACTUAL ALLEGATIONS AGAINST [THE DU-ZHOUS].**

#### **ASSIGNMENT OF ERROR IV**

**THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING [THE DU-ZHOUS] ATTORNEY'S FEES, EXPERT FEES, AND COSTS BECAUSE [THE DU-ZHOUS] FAILED TO PRESENT ANY EVIDENCE THAT COULD DEMONSTRATE HOW THE TIME EXPENDED BY THEIR ATTORNEY OR THEIR EXPERT WAS ATTRIBUTED TO THE LIS' PURPORTED FRIVOLOUS CONDUCT.**

#### **THE DU-ZHOUS' CROSS-ASSIGNMENT OF ERROR VI**

**THE TRIAL COURT ERRED IN LIMITING SANCTIONS IN ITS APRIL 7, 2025[] DECISION.**

{¶65} Our resolution of the Lis' second assignment of error and the Du-Zhous' first and second cross-assignments of error renders the Lis' first, third, and fourth assignments of error and the Du-Zhous' sixth cross-assignment of error moot pursuant to App.R. 12(A)(1)(c).

{¶66} For the forgoing reasons, the Lis’ second assignment of error is sustained, and their first, third, and fourth assignments of error are moot. The Du-Zhous’ first and second cross-assignments of error are sustained, their third and fourth cross-assignments of error are overruled, their fifth cross-assignment of error is sustained in part and overruled in part, and their sixth cross-assignment of error is moot. The judgment of the Summit County Court of Common Pleas is affirmed in part and reversed in part and remanded for proceedings consistent with this decision.

Judgment affirmed in part,  
reversed in part.  
and cause remanded.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed equally to both parties.

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BETTY SUTTON  
FOR THE COURT

HENSAL, P. J.  
STEVENSON, J.  
CONCUR.

APPEARANCES:

KYLE A. JOHNSON, ZACHARY S. MOTTICE, and HAYLEY E. KICK, Attorneys at Law, for Appellants/Cross-Appellees.

KAREN C. LEFTON, Attorney at Law, for Appellees/Cross-Appellants.

ADAM D. FULLER, Attorney at Law, for Cross-Appellee.

THOMAS M. DICAUDO, Attorney at Law, for Cross-Appellees.