

I. FACTUAL AND PROCEDURAL BACKGROUND

A. CV-17-888016

This matter arises out of the fatal shooting of Jun Wang on October 28, 2016. On this date, Wang's sister, Julia Rielinger and her friend, Jon Liptak, visited the North Royalton Police Department where she requested officers to assist her in executing a Probate Court Order to have Jun Wang transported to a mental health facility because he was suffering from a mental health crisis. Plaintiffs allege that the North Royalton Officers "rushed" through the door when they arrived at Rielinger's condominium. There was allegedly a struggle between Wang and the officers. Wang allegedly slashed one of the officers, Officer Kimmel, with a knife across the face and stabbed him in the leg. The other officer present at the time, Officer MacDonald, fatally shot Wang. The officers then placed Rielinger and Liptak in the back of separate police cars, taking Rielinger's car keys and cell phone. They held Rielinger and Liptak for "several hours" before the officers let them leave.

On October 25, 2017, attorneys Marcus Sidoti and Joseph F. Scott filed a Complaint styled as "*Elizabeth Goodwin, Admin., Estate of Jun Wang, et al. v. City of North Royalton, OH, et al.*" The Plaintiffs were (1) Elizabeth Goodwin, Admin of the Estate of Jun Wang, (2) Julia Rielinger, and (3) Jon Liptak. Plaintiffs filed the Complaint against Defendants (1) City of North Royalton, Ohio, (2) Officer Kip MacDonald, (3) Officer Jason Kimmel, (4) Police Chief John Elek, (5) Lieutenant Cutler, (6) Lieutenant Keith Tarase, and (7) John Doe Officers No. 1-4. The Complaint alleged the following claims: (1) Wrongful Death, (2) Survivorship Claim, (3) Intentional Infliction of Emotional Distress, (4) False Arrest/ False Imprisonment, (5) Wanton, Willful, and Reckless Conduct, (6) Assault and Battery of Jun Wang, (7) Assault and Battery on

Plaintiffs Rielinger and Liptak. Plaintiffs alleged only state law claims against Defendants in their Complaint.

In November of 2017, Defendants removed the matter to federal court. On January 24, 2018, the federal court remanded the matter back to this Court, stating that Plaintiffs explicitly brought only state law claims. On January 30, 2018, this Court posted its initial case management schedule, which included a discovery cut-off of May 18, 2018. Following the January 30th case management conference, the Court extended the case management schedule approximately four (4) times. Still the parties did not complete their discovery.

On December 27, 2018 and December 31, 2018, Attorney Samuel R. Smith filed a Notice of Appearance for Plaintiffs Julia Rielinger and Jon Liptak, respectively. Attorney Joseph R. Scott and Marcus Sidoti remained as counsel for the Estate of Jun Wang.

On December 31, 2018, Plaintiffs Rielinger and Liptak filed another Motion for Extension of Time to Respond to Defendants' Discovery Requests. This Court granted the Motion and ordered Rielinger and Liptak to respond to the requested discovery by no later than January 11, 2019.

On February 8, 2019, Plaintiffs Rielinger and Liptak filed a Motion for Extension of Time to Complete Depositions. The Court had previously set a deadline of February 28, 2019 for the parties to complete fact depositions. In this Motion, counsel for Rielinger and Liptak stated that Rielinger wanted to "review the file of Plaintiff's Counsel for Elizabeth Goodwin prior to being deposed by defense counsel" and that she would be in China from February 15, 2019 to February 28, 2019. Therefore, she was unable to be deposed until after February 28, 2019. In response to this Motion, the Court set a pretrial for February 12, 2019. During the pretrial, the Court granted the Motion, and based on discussions with counsel regarding discovery issues, ordered Plaintiff

Rielinger to forward signed medical authorizations to Defendants by no later than February 15, 2019.

On March 4, 2019, Defendants filed a Notice of Plaintiff Rielinger's Insufficient Discovery Responses. In this Notice, Defendants stated, in pertinent part:

In discovery, Plaintiff Rielinger identified three separate treatment providers. However, on February 15, 2019, Plaintiff Rielinger's counsel produced executed authorizations to two of the providers. After discussion, Plaintiff Rielinger's counsel advised that Ms. Rielinger would sign the third authorization. However, to date, Ms. Rielinger has not produced that third authorization.

In response to the Notice, this Court ordered that only the medical records from Plaintiff Rielinger's produced medical authorizations may be used in the trial of this matter.

On March 8, 2019, Julia Rielinger, *pro se*, filed a motion titled "Motion for Additional Time for Discovery and Documents." This motion asked for additional time to produce discovery and additional time for her to obtain new legal representation. Three days later, on March 11, 2019, Attorney Samuel R. Smith moved to withdraw as counsel for Plaintiff Rielinger. He remained as counsel for Liptak.

On March 14, 2019, this Court held an in-person pretrial. The Court amended all of the case management dates and ordered Plaintiff Liptak to respond to Defendants' outstanding discovery requests by no later than March 22, 2019. The Court also permitted Attorney Samuel Smith to withdraw as counsel for Plaintiff Rielinger.

On March 25, 2019, Plaintiff Rielinger filed a *pro se* "Motion for Dismissal without Prejudice." The court interpreted this as a 41(A) dismissal on behalf of Julia Rielinger. On April 1, 2019, this Court granted said motion, thereby dismissing Plaintiff Rielinger's claims without prejudice. All other claims remained pending. On May 6, 2019, the remaining Plaintiffs, the Estate and Jon Liptak, voluntarily dismissed the remaining claims without prejudice.

Although pending for more than one year, little to nothing was accomplished during the first filing of this case.

B. CV-20-932294 & CV-20-932385 (The re-filed cases)

On May 4, 2020, Attorney Marcus Sidoti re-filed the case, naming the Estate and Julia Rielinger as plaintiffs. (CV-20-932294). At this time, Elizabeth Goodwin was no longer the Administrator of the Estate of Jun Wang. Instead, Julia Rielinger was now the administrator of her brother's estate.

On May 6, 2020, Plaintiffs Julia Rielinger, Jon Liptak and the Estate of Jun Wang filed a Complaint in case CV-20-932385. This Complaint was filed without an attorney and was submitted as a *pro se* complaint on behalf of Rielinger and Liptak. However, the Estate was not represented by counsel. Both cases were eventually transferred to Judge Collier-Williams.

Rielinger began filing motions on her own, and purportedly on behalf of the Estate. On August 6, 2020, in case CV-20-932294, the Court was advised that Rielinger had terminated Attorney Marcus Sidoti and this Court permitted him to withdraw as counsel for Plaintiffs.

On September 1, 2020, the Court held a telephone conference in both cases. Plaintiff Julia Rielinger appeared *pro se*. The Estate of Jun Wang failed to appear, as there was no attorney for the Estate. Defendants appeared through counsel. The Court ordered the Estate of Jun Wang to retain an attorney by September 25, 2020, and subsequently set a case management schedule.

In CV-20-932385, Attorney Christopher McNeal filed a Notice of Appearance on behalf of the Plaintiffs Julia Rielinger and the Estate on September 24, 2020. On December 10, 2020, Defendants filed a Motion to Dismiss case CV-20-932294. The Court granted the Motion, leaving only case CV-20-932385 before this Court.

On December 3, 2020, seven months after the refiling of this case, Attorney Christopher McNeal filed a Motion for Leave to file Amended Complaint. The North Royalton Defendants opposed the Motion for Leave to Amend, stating that Plaintiffs have already significantly delayed prosecuting this matter and that they have yet to receive discovery responses from Plaintiffs that were already a month overdue.

On December 21, 2020, the Court held a telephone conference with the parties. Plaintiff Jon Liptak, who was *pro se*, failed to appear. The Court granted Plaintiffs' Motion for Leave to File Amended Complaint and set a new case management schedule

On March 4, 2021, the day before the discovery cut-off, the North Royalton Defendants filed a Motion to Compel Plaintiffs' Responses to Written Discovery. In this Motion, the North Royalton Defendants stated that they served discovery requests upon all Plaintiffs on October 12, 2020. Defendants' counsel followed up several times with Plaintiffs and did not receive a response from Plaintiffs. On December 3, 2020, *almost a month after they were due*, counsel for the Estate and Rielinger advised that responses were forthcoming. Rielinger provided responses to written discovery on December 30, 2020. Defendants did not receive anything from Liptak nor the Estate. The North Royalton Defendants stated that the responses that were produced by Rielinger on December 30, 2020 did not include any documents, despite identifying specific documents in the responses to Requests for Production of Documents. Following a review of those responses, the Defendants sought medical authorizations to obtain psychological and medical records of Rielinger for treatment she claims as a result of the incident in her Complaint. Rielinger did not produce any documents until January 26, 2021. Even then, those documents did not include any medical or psychological records.

Defendants issued a Second Set of Interrogatories and Requests for Production to Plaintiff Rielinger and Plaintiff Estate of Jun Wang on January 26, 2021. Nothing was produced in response to this Second Set of Interrogatories and Requests for Production. Simultaneously with this Motion, Defendants filed a Motion for Extension of Time for Limited Fact Discovery. At this point, the discovery deadline was set for March 5, 2021. Due to the numerous discovery issues, Defendants requested an extension to conduct the necessary depositions of the Plaintiffs once discovery was fully responded to by them.

On March 23, 2021, the Court held a telephone conference. Plaintiff Jon Liptak appeared *pro se* and the remaining parties appeared through counsel. During the conference, the Court ordered Jon Liptak to respond to Defendants' discovery requests by April 2, 2021. The Court also extended the discovery cut-off to May 14, 2021, Plaintiff's expert report to April 16, 2021, and Defendant's expert report to May 14, 2021.

On April 16, 2021, *the date Plaintiff's expert report was due*, Attorney Christopher McNeal filed a Motion for Extension of Time to File Expert Reports. This Court granted the Motion and gave Plaintiffs until May 7, 2021 to file their expert reports.

On May 3, 2021, Defendants filed a Motion to Dismiss Plaintiff Jon Liptak for Failure to Complete Discovery. In this Motion, Defendants state that *pro se* Plaintiff Liptak failed to produce any discovery since the Court ordered him to provide discovery by April 2, 2021. This Motion went unopposed and the Court granted it, thereby dismissing Liptak from the action.

On May 21, 2021, Defendants filed a Motion for Extension of Expert Deadline, Discovery Deadline, and Dispositive Deadline. In this Motion, Defendants state that since the last motion for extension had been granted, they still had not received *any* additional discovery responses or documents from any Plaintiff. In addition, according to the Motion, on May 6, 2021, Plaintiff

timely produced a report of their purported expert, Roy Bedard. Bedard was the only expert identified by any of the Plaintiffs at this point. The Court granted the motion and set the following deadlines: discovery cut-off of June 28, 2021, Defendants' expert report deadline of June 28, 2021, and dispositive motion deadline of July 21, 2021. Defendants submitted all of their expert reports on June 28, 2021, the date they were due.

On June 28, 2021, the new discovery cut-off date, Julia Rielinger, *pro se*, filed a Motion for Extension. This Motion stated that Rielinger was having difficulties reaching her attorney. As such, she was requesting an extension of the discovery cut-off. In response to this Motion, the Court ordered a telephone status conference on July 8, 2021. On July 6, 2021, Attorney Christopher McNeal filed a Motion to Withdraw as Counsel for Plaintiffs Rielinger and the Estate. On July 9, 2021, Rielinger, *pro se*, filed a "Motion for New Counsel."

On July 13, 2021, the Court held the telephone status conference. During the conference, the Court granted Attorney Christopher McNeal's Motion to Withdraw as Counsel for Plaintiffs. The Court gave Plaintiffs until August 5, 2021 to obtain new counsel. On July 27, 2021, Attorney Michael Drain filed a Notice of Appearance on behalf of the Estate only. Julia Rielinger remained *pro se*.

On August 16, 2021, Defendants filed a Motion for Sanctions against Plaintiffs Rielinger and the Estate. This Motion detailed Defendants efforts to obtain complete discovery responses from Plaintiffs, beginning in October of 2020. On August 26, 2021, Plaintiff Rielinger, *pro se*, replied to Defendants' Motion for Sanctions, titling it "Plaintiff's Motion to Dismiss Defendants' Motion for Sanctions." On September 3, 2021, Defendants filed a Reply in Support of their Motion for Sanctions. On September 14, 2021, the Estate filed an untimely Response to Motion for Sanctions. Defendants moved to strike the Estate's Reply, as it was untimely and submitted

without leave of Court. On September 15, 2021, Rielinger, *pro se*, filed a “Motion for Intervene and Strike.”

On September 16, 2021, the Court held an on-the-record hearing on Defendants’ Motion for Sanctions. Plaintiff Rielinger appeared *pro se*, new counsel for the Estate failed to appear, and Defendants appeared through counsel. The Court held the Motion for Sanctions in abeyance and set an entirely new case management schedule.

On December 22, 2021, *a week before the new discovery cut-off date*, the Estate filed a Motion for Extension of Time for Discovery. The Motion sought an additional 90 days for discovery, which would make the new cut-off March 31, 2022. Although the Motion sought additional time for discovery, the body of the motion indicated that the Estate was actually seeking an extension of time to complete its expert reports.

The North Royalton Defendants opposed this Motion for Extension, arguing that the continued delay would be prejudicial to the Defendants. The Opposition also argued that neither the Estate nor Rielinger had identified any of the experts that the Estate listed in its Motion in responses to discovery or any supplements thereto.

On January 11, 2022, the Estate filed a Motion to Continue the Court-ordered mediation that was set for January 19, 2022. The North Royalton Defendants filed its Brief in Opposition, arguing that the delay in this case is the sole fault of the Plaintiffs and any further continuances would prejudice Defendants and reward the exceedingly dilatory conduct of the Estate and Rielinger.

Due to the flurry of Motions filed around this time, the Court set a telephone conference for February 2, 2022. On February 1, 2022, Rielinger, *pro se*, filed a “Motion for Contempt.”

On February 2, 2022, the Court held the telephone conference with all parties. During the conference, this court granted, in part, the Estate's Motion for Extension of Discovery. The Court set the discovery cut-off as February 28, 2022. The Court also continued the dispositive motion deadline to March 18, 2022. Further, the Court denied Rielinger's *pro se* Motion to Reply, Motion to Intervene, and Motion for Contempt.

On February 7, 2022, the North Royalton Defendants filed a Motion to Clarify Court's February 4, 2022 Journal Entry. This Motion sought "clarification specifying that the extension of discovery did not allow Plaintiff to identify and submit additional expert witnesses." On February 14, 2022, the Estate opposed the Motion for Clarification, stating that the North Royalton Defendants made no objection in respect to the Estate obtaining expert reports. On February 15, 2022, Julia Rielinger *pro se* filed her own Motion for Clarification.

On February 9, 2022, the Estate filed a Motion to Show Cause. In this Motion, the Estate moved for an order to have the Office of the Cuyahoga County Medical Examiner to show cause why it should not be held in contempt for failure to produce a diagram created by it in connection with the medical examination and autopsy of Jun Wang. The Estate argued that they submitted a subpoena to the Cuyahoga County Medical Examiner on October 22, 2021. In the subpoena, they sought a "complete medical examiner's report concerning death of Jun Wang on 10-28-16 including autopsy report, photos, diagrams, clothing (shirt), x-rays, and any other matters relevant to ME's examination." The Estate explained that on January 19, 2022, the Medical Examiner's Office emailed their expert, David Balash, stating that they were "reluctant to create another diagram in this case. I think it would be more accurate to use the photos taken during autopsy, the X-rays shot prior to autopsy and my report to explain the paths of the bullets through Jun Wang's body."

On February 9, 2022, Rielinger, *pro se*, filed a Motion to Compel, seeking an order from the Court compelling no less than 15 individuals to appear for depositions.

On February 16, 2022, the North Royalton Defendants filed a Brief in Opposition to Rielinger's *pro se* Motion to Compel, stating that Plaintiff Rielinger has never requested any depositions of the Defendants nor did she issue any Notice of Subpoenas for any such depositions.

On February 16, 2022, this Court entered an Order granting Defendants' Motion to Clarify. In this Order, the Court stated that the Court's prior order only extended the discovery cut-off and did not extend Plaintiffs' time for identification and submission of expert reports.

Subsequently, on February 18, 2022 Plaintiff Julia Rielinger, *pro se*, filed a "Motion Continue and Permission to Submit Expert Reports." On that same date, Attorney David G. Phillips filed a Notice of Appearance for "all plaintiffs" in the case. Simultaneously, Attorney David Phillips filed Plaintiffs' Motion to Extend Expert Report and Discovery Cut-off Dates. Plaintiffs requests a ninety (90) day extension, until May 30, 2022 to complete discovery and to provide expert reports. In this Motion, Plaintiffs state the following:

On today's date, Plaintiffs' have retained new counsel for all claims in this case, whose appearance has been entered simultaneously with this Motion for Extension. This Court has now set February 28, 2022 as the discovery cutoff date, and the date for Plaintiffs to provide expert reports was December 31, 2021. Plaintiffs are seeking further extensions of these case management dates so that the parties may complete discovery through May 30, 2022, and that Plaintiffs may submit expert reports by April 1, 2022. Plaintiffs note that the Court provided in its February 3, 2022 Order that no further extensions will be granted, but through their new counsel Plaintiffs urge the Court that extraordinary circumstances demonstrate good cause and excusable neglect to extend these dates, and that without such extension Plaintiffs and their claims may be irreparably harmed.

Plaintiff went on to state: "*Counsel believes that the Plaintiffs will be in a position to have all necessary discovery completed by May 30, 2022. Based on what has been reviewed, the*

undersigned also believes that complete reports by experts for Plaintiffs can be supplied to Defendants' counsel by April 1 2022."

On February 23, 2022, Plaintiffs' new attorney filed a Motion & Request for an Immediate on the Record Telephone Conference. On February 25, 2022, Defendants opposed both the Motion to Extend Discovery/Expert Reports and the Motion for an on the Record Hearing. Plaintiffs filed a Reply in Support of their Motion for Extensions on February 28, 2022. In this Reply, Plaintiff stated, "Plaintiffs represent that with additional time to put their case in order with new, additional counsel – ***that no further extensions will be needed.***" (Emphasis added).

On February 28, 2022, the Estate filed a Motion to Show Cause. This Motion stated that counsel for the Estate submitted a subpoena to the Cuyahoga County Sherriff seeking "two bullets that were discharged and caused the death of Jun Wang on October 28, 2016." On this same date, counsel for the Estate filed a Motion for Reconsideration of the Court's Order, dated February 16, 2022, which clarified its prior order regarding the discovery cut-off and expert report deadlines. The Estate attached two draft expert reports of David Balash and Timothy Dimoff to this Motion.

Again, based on the flurry of motions that were filed between February 3rd and February 28th, the Court set an in-person hearing for March 8, 2022. On March 8, 2022, Attorney Peter G. Pattakos, filed a Notice of Appearance as Counsel for Plaintiffs. The Court held a hearing on the record. Attorney Drain appeared for the Estate, Attorney Phillips appeared on behalf of all Plaintiffs, and Attorney Pattakos appeared on behalf of all Plaintiffs. The Court heard arguments from both sides regarding the issues of discovery and expert report deadlines. This Court ultimately granted an extension of time on all dates.

Furthermore, during the hearing, this Court reminded Rielinger that she was now represented by counsel and could not keep filing her own *pro se* motions. Accordingly, the Court

ordered stricken from the docket all filings by Rielinger while counsel represented her. The Court allowed an additional 60 days for discovery and plaintiff's expert report, relying on the assurances from the new attorneys that they would be able to complete discovery and submit complete expert reports by this deadline. The Court also allowed Defendants additional time to file an expert report, if necessary, even though they had already produced their report in June of 2021. The new deadline for discovery and Plaintiffs' expert report was set as May 6, 2022.

On May 5, 2022, the parties filed a Joint Stipulation for Extension of Discovery. The parties requested a short continuance until June 17, 2022. The Court granted this extension.

At this time, the matter began to fall into disarray again. On May 6, 2022, Plaintiff Rielinger, although represented by counsel at the time, filed a *pro se* "Motion for Continuance," which this Court ordered stricken. On May 21, 2022, Rielinger filed a *pro se* "Motion for Removal." In this Motion, Rielinger requested that this Court remove attorney Peter Pattakos and his firm from representing her in this matter. She stated that prior to the March 8th hearing with the Court, she had never met Pattakos. She states that since that hearing, she has asked Pattakos to withdraw from representing her. The Court denied this Motion.

On May 27, 2022, after being dismissed from this case more than a year ago, *pro se* Plaintiff Jon Liptak filed a "Motion for Relief." In this Motion, Liptak requested the Court for relief from its decision in May of 2021 that dismissed him from the case due to his failure to prosecute and respond to discovery.

With the discovery cut-off of June 17, 2022 approaching, another flurry of motions were filed in this case. On June 6, 2022, Attorney Peter Pattakos filed a Motion to Withdraw as Counsel for Julia Rielinger in her individual capacity only, with the intent to remain as the attorney for the Estate of Jun Wang. On June 6, 2022, Julia Rielinger filed another *pro se* Motion for Removal,

requesting that attorneys Pattakos and Philips be removed as attorneys from the Estate. On June 15, 2022, Julia Rielinger filed a *pro se* Motion for Continuance, seeking additional time for discovery. On June 15, 2022, attorney David Phillips filed a Joint Motion to Extend/ Stay Case Management Dates. Plaintiffs and Defendants jointly requested an extension of deadlines, citing ethical concerns with representation of the Estate of Jun Wang and the need to possibly involve Probate Court.

The Court held an on-the-record status conference on June 22, 2022. During the conference, attorney Peter Pattakos indicated that he may seek to remove Rielinger as Administrator of the Estate of Jun Wang in Probate Court due to his belief that she was acting contrary to the benefit of the Estate. He further stated that they were in the process of retaining attorneys to provide an analysis of the issue of representation of the Estate of Jun Wang and potential conflicts of interest.

The Court denied Plaintiff Jon Liptak's Motion for Relief. The Court granted Pattakos' and Phillips' Motion to Withdraw as Counsel for Plaintiff Rielinger individually. This left Rielinger *pro se* again for her own individual claims. The Court held Rielinger's Motion for Removal in abeyance. Further, the Court stayed all deadlines and set a status conference in August of 2022 to allow Plaintiffs to resolve any issues in Probate Court.

On July 6, 2022, two weeks after the status conference, Attorney Peter Pattakos and his firm, and David G. Phillips moved to withdraw as counsel for the Estate. The Court granted the Motion. Attorney Drain remained as attorney for the Estate and Rielinger proceeded *pro se*. The Court set a dispositive motion deadline of July 29, 2022. The Court further stated, "Any discovery that is needed must be completed by 07/22/2022."

On July 19, 2022, Plaintiff Rielinger, *pro se*, filed a Motion for Continuance. On that same date, the Estate filed a Motion to Order Deposition of Sergeant Bilinovich.

On July 22, 2022, the parties filed a Joint Motion to Continue Discovery Deadline and Dispositive Motion Deadline. The parties requested that the deadlines both be extended to August 31, 2022. The Motion explained that the parties were attempting in good faith to schedule the remaining depositions. The Motion concluded by saying, “The Estate and the North Royalton Defendants understand the Court has been patient and request a little more patience in order to complete these three depositions.” The three depositions being Jon Liptak, Timothy Dimoff, and Sergeant Bilinovich. The Court granted this motion in part, by extending the discovery cut-off to August 26, 2022, and the dispositive motion deadline to September 2, 2022.

On August 3, 2022, Rielinger filed a *pro se* Motion to Dismiss the North Royalton Defendants’ Opposition to her Motion to Continue that was filed on August 2, 2022. She argued that Defendants’ counsel violated the Ohio Professional Conduct and that Defendants violated ORC 313.09 and ORC 313.10, laws about record keeping by the coroner after a death.

On August 10, 2022, Rielinger filed a *pro se* Notice of Filing of Subpoena for Deposition. This subpoena was sent to the North Royalton Police Department and demanded production of the “two bullets Cuyahoga County Medical Examiner Dr. Thomas Gilson found inside the body of Jun Wang during autopsy and records regarding the chain of custody of these two bullets.”

On August 11, 2022, Rielinger, *pro se*, filed a Motion for Clarification after the Court held a telephone conference on that date. Rielinger requested clarification that August 31, 2022 would be the last day for depositions for all parties. The Court granted said Motion and stated that discovery cut-off remained set at August 26, 2022 and the dispositive motion deadline remained

set at September 2, 2022. The Court stated that, “the discovery cut-off may be extended by agreement of the parties.” *Journal Entry, Dated 08/15/2022.*

On August 12, 2022, the North Royalton Defendants filed a Motion to Quash Subpoenas and for Protective Order in response to Rielinger’s subpoenas. They argue that the subpoenas are untimely and are outside of Rielinger’s individual claims. On August 13, 2022, Rielinger *pro se* filed a “Motion to Dismiss,” where she requested the Court to dismiss the Motion to Quash filed by the Defendants and to “sanction and remove” attorney Terry Williams, one of the counsel for Defendants.

On August 28, 2022, Rielinger *pro se* filed a Motion to Compel. In this Motion, she requested that the court “compel and continue the deposition deadlines.” Rielinger explains that she wants the Court to compel the Defendants to pay expert Timothy Dimoff before his deposition on August 31, 2022. She further states that she has subpoenaed the personnel file of former Sergeant Bilinovich and has not received a response. She requested the Court to compel the Defendants to produce the documents before August 31, 2022. Finally, she states that the Defendants agreed to allow her to depose Lieutenant James Cutler, Officers Christopher Johnson, and John Krasniansky. She requests that the Court compel the Defendants to provide their availabilities.

On August 30, 2022, the Defendants filed a Motion to Preclude Testimony of Timothy Dimoff, Plaintiff’s Expert. In this Motion, the Defendants state the Plaintiff’s expert Timothy Dimoff appeared for his deposition on August 29th. However, he refused to sit for his deposition without an agreement about his fee. Expert Dimoff was requesting a fee of \$4,000.00 for a four-hour deposition, plus \$450.00/hr. thereafter. Since Dimoff did not sit for his deposition, Defendants requested that his testimony be precluded. In the alternative, they requested sanctions

for failure to attend the deposition, to set a reasonable fee for Dimoff, and to continue the dispositive motion deadline.

On August 30, 2022, Rielinger *pro se* filed a “Motion for Continuance.” In this Motion, Rielinger states that the deposition of Sergeant Bilinovich was set for August 31, 2022, but she was informed by Defendants’ counsel that they needed to reschedule it. She goes on to state that expert Timothy Dimoff must be paid before the depositions. Furthermore, Rielinger states that the parties were working on scheduling the depositions of Lieutenant Cutler, Officers Johnson and Krasniansky. However, they would not be completed until September 2nd, beyond the discovery cut-off.

On September 1, 2022, the Court set a reasonable fee for expert witness Dimoff and extended the dispositive motion deadline to September 30, 2022. In the last sentence of the Order, the Court stated that it was aware that two depositions need to be rescheduled and taken. The Court concluded by saying that the two depositions must be completed before the dispositive motion deadline.

On September 2, 2022, Defendants filed a Motion to Strike Timothy Dimoff Supplemental Report and Reconsider Prior Decision Permitting his Initial Report. In this Motion, Defendants explain that the Estate submitted a “supplemental” report of Timothy Dimoff on August 31, 2022. The report was purportedly prepared on August 30, 2022, one day after Dimoff was supposed to sit for his deposition. In this “Supplement,” Timothy Dimoff introduces the expert opinions of two additional experts, David Hammons and Cyril Wecht. Defendants state that neither of these individual experts were ever identified or disclosed to them. Defendants argue that this “supplement” is not a supplement, but is instead an entirely new report.

The Defendants further requested the Court to reconsider its March 8, 2022 Order that granted Plaintiffs' request for an extension of time to submit their expert reports. This is the Order that initially allowed Dimoff to be identified as an expert. Defendants point to the fact that Plaintiffs were afforded an improper advantage because they were able to prepare an expert report with Defendants' expert report in hand.

On September 7, 2022, Defendants filed a Motion to Strike the Supplemental Report of Dr. D. Joseph Hupp, Rielinger's treating counselor. On August 31, 2022, Rielinger submitted a "supplemental" report of her treating counselor. Hupp had previously produced a "report" in December 2021, when Rielinger was proceeding *pro se*. However, he was never identified under Civil Rule 26(B)(7)(a) as a witness. Furthermore, when Rielinger was finally represented by counsel, all prior expert reports had been disavowed. The North Royalton Defendants asked the Court to strike this "supplemental" report, allowing him to still testify as a treating counselor.

On September 8, 2022, Rielinger *pro se* filed a Motion to Answer and Dismiss Defendants' September 2nd and September 7th Motions to Strike Plaintiffs' Updated Reports. Rielinger makes several arguments, stating that Plaintiffs have followed the Rules of Civil Procedure, there has been no surprise, and that all the experts were retained and paid in December of 2021.

On September 9, 2022, Rielinger *pro se* filed subpoenas for John Krasniansky, Jim Cutler, and Christopher Johnson. On September 9, 2022, the Estate filed a Brief in Opposition to Defendants' Motion to Strike the Supplemental Report of Timothy Dimoff. The Estate says, "[c]ounsel's motion to strike complains about a supplementary report that was prepared two days after the failed deposition, even though Mr. Dimoff in his earlier report reserved the right to add to his report with additional information and depositions that might be forthcoming."

On September 15, 2022, this Court granted and denied in part Defendants' Motion to Strike Supplemental Report and Reconsider Prior Decision Permitting His Initial Report. The Court ordered stricken the supplemental expert report of Timothy Dimoff. However, the Court did not reconsider its previous order allowing the initial expert report.

On September 16, 2022, the Court posted an Order extending the dispositive motion deadline to 10/14/2022. The Court further stated:

THE PARTIES HAVE INDICATED THAT EXPERT TIMOTHY DIMOFF IS AVAILABLE FOR DEPOSITION ON 09/30/2022. EXPERT TIMOTHY DIMOFF SHALL BE DEPOSED ON 09/30/2022. THIS COURT WILL GRANT NO FURTHER EXTENSIONS ON THIS MATTER. ANY FURTHER DELAY MAY RESULT IN SANCTIONS, INCLUDING THE EXCLUSION OF THE EXPERT REPORT AND TESTIMONY OF TIMOTHY DIMOFF.

On September 18, 2022, Plaintiff Rielinger *pro se* filed a Motion for Hearing. In this Motion, she states that Defendants initiated *ex parte* communications with the Court. She attaches an email from Attorney Terry Williams to the Court's staff attorney inquiring about the impending dispositive motion deadline. The staff attorney replied to Mr. Williams, as well as Rielinger and counsel for the Estate.

On September 22, 2022, about three weeks before the dispositive motion deadline, attorney John R. Christie filed a Motion to Appear and Extend Deadlines. This new attorney wanted to appear for Plaintiff Julia Rielinger on her individual claim. This Court granted the Motion to appear and denied the motion for extension of time.

On September 26, 2022, Plaintiff Rielinger *pro se* filed an Emergency Motion for Continuance. She requested a continuance of the September 30th deposition cut-off for Timothy Dimoff. Rielinger states that Lieutenant Cutler, Officer Johnson, and Officer Kraniansky were not available to be deposed until September 28th. She stated that this was not enough time for a court

reporter to transcribe the officers' testimony for Expert Dimoff to review it and then be deposed himself.

On September 26, 2022, counsel for the Estate filed a Motion for Reconsideration of the September 1, 2022 and September 15, 2022 Journal Entries. The September 1st Order set a reasonable fee for expert Timothy Dimoff. The September 15th Order struck the supplemental expert report of Timothy Dimoff from the record. In regard to the September 1st Order, the Estate requested an oral hearing on the subject of fees so that Mr. Dimoff "can tell his side of the story regarding what he believes to be his reasonable fees for the work involved." In regard to the September 15th Entry, the Estate argues that Dimoff should be able to testify regarding his supplemental report that was forwarded to Defendants' counsel on August 31, 2022. Concerning David Hammons, the Estate says that Dimoff is willing to omit that part of his supplemental report.

On September 27, 2022, Plaintiff Rielinger *pro se* filed a Motion for Reconsideration. Rielinger requests the Court to reconsider its entries that struck the supplemental reports of Dr. D. Joseph Hupp and Timothy Dimoff. Rielinger cites Rule 60(B)(3), Relief from Judgment, in support of her Motion. She also once again states that Defendants' attorneys violated the Ohio Professional Conduct Codes and states that they "are under investigation of Supreme Court Disciplinary Counsel."

On October 10, 2022, The North Royalton Defendants filed a Brief in Opposition to the Estate's Motion for Reconsideration. They begin the Opposition by stating that the deposition of Dimoff is complete. They completed his deposition on September 30th, as was ordered by the Court. Next, based on the Court's Order striking his supplemental report, the Defendants did not seek any testimony concerning the additional experts cited in his supplemental report.

On October 12, 2022, two days before the dispositive motion deadline, the Estate filed a “Notice of Subpoena” to Sergeant Kenneth Bilinovich. The subpoena commanded Bilinovich to appear for his deposition on October 26, 2022 at 10:00 AM.

On October 14, 2022, the Defendants filed their Motion for Summary Judgment. On that same date, Rielinger *pro se* filed a Motion for Leave to File Supplement Report. This Motion is broken up into three separate filings. Rielinger requests the Court to “for the merit of the case, accuracy of the justice and due process right, the Plaintiff respectfully ask this honorable court to allow the Plaintiff to file the supplement expert report that is attached with this motion which this honorable court can use to supersede the previous supplement expert report.”

Rielinger cites Local Rule 21.1(B). However, this local rule is titled “Court Mediation” and has nothing to do with expert witnesses. She states that this repealed local rule states that all supplemental reports must be supplied no later than 30 days prior to trial. Since there are 105 days before trial, she states that the supplemental reports are well within the local rule requirement. Rielinger attaches to the Motion the “Court Expert Report of Timothy Dimoff,” dated October 13, 2022. “Part II” of Rielinger’s Motion for Leave to File Supplement Report is a chart titled “Schedule of Liabilities.” The Applicant’s name is listed as Jon Liptak, Jupiter Global Resources LLC. It is unclear what this document has to do with anything at all. “Part III” is the Investigative Report of David Hammons.

On October 14, 2022, Rielinger *pro se* filed a “Motion for Leave to File.” This Motion is almost identical to the first “Motion for Leave to File Supplemental Expert Report.” Rielinger attached the Report of Cyril Wecht to this Motion.

On October 17, 2022, Rielinger *pro se* filed a “Motion to File Local Rule.” For this Motion, Rielinger just attaches Local Rule 21.1 “Trial Witness.” This is an old rule that was previously repealed.

On October 21, 2022, Defendants filed a Motion to Quash Estate’s Subpoena to Kenneth Bilinovich. After briefs in opposition were filed by all Plaintiffs, the Court granted the Motion to Quash on October 26, 2022.

On October 28, 2022, the Defendants filed a Brief in Opposition to Plaintiff Rielinger’s Motions for Leave to Supplement Expert Reports. The Defendants initially argue that the “supplemental” reports that Rielinger is seeking to submit are for purported experts which all cover issues related to the claim of the Estate and not Ms. Rielinger. Furthermore, the Motions to Supplement completely ignore the fact that the Estate and Rielinger only submitted *one* expert report by the May 6, 2022 expert report deadline. Contrary to Rielinger’s arguments, the Defendants did *not* question Dimoff on aspects of his supplemental report.

On October 30, 2022, Rielinger *pro se* filed a Motion to Reconsider. This Motion states that the deposition of Kenneth Bilinovich took place on October 26, 2022. She asks the court to reconsider its entry of September 26, 2022 that quashed the subpoena to Kenneth Bilinovich.

On November 4, 2022, Rielinger *pro se* filed a “Motion for Leave to File Expert Supplement Report and Brief Reply to Defendants Opposition.” This is a 97-page document that summarizes Rielinger’s perspective of what happened on the date Jun Wang was shot.

On November 4, 2022, Rielinger *pro se* filed a Motion to Dismiss Defendants’ October 28th opposition to Plaintiff’s Motion for Leave to File Supplement Report. Again, Rielinger cites to a repealed local rule, Loc. Rule 11.0, in regards to the timing of opposing motions.

On November 14, 2022, the Estate filed an Opposition to Defendants' Motion for Summary Judgment.

On November 15, 2022, Rielinger filed her *pro se* Opposition to Defendants' Motion for Summary Judgment. She also sought leave to file it *instanter*. The Court granted Rielinger leave.

On November 16, 2022, Rielinger filed a *pro se* Motion to Amend Complaint to Conform to The Evidence. In this Motion, Rielinger seeks to Amend the Complaint to add a Federal §1983 violation. On November 30, 2022, The North Royalton Defendants opposed this Motion to Amend and filed their Reply Brief in Support of Summary Judgment. On December 1, 2022, Rielinger, *pro se*, filed yet another "Motion to Dismiss" the pleadings of Defendants, stating that their oppositions do not conform to the now-repealed Local Rule 11.

Lastly, on December 11, 2022, The Estate filed a Motion to Strike Defendants' Reply Brief in Support of Summary Judgment. Rielinger, *pro se*, filed her own Motion to Strike Defendants' Reply Brief on December 22, 2022. On January 26, 2023, Attorney Christopher McNeal, who represented Plaintiff's previously, filed a Notice of Appearance on behalf of the Estate only.

To summarize, since the inception of this case, Rielinger has had no less than seven (7) different attorneys represent her claims in this matter and discovery was open for at least (2) years in the re-filed case alone.

This Court has been extremely lenient and patient during the length of this case, recognizing that cases should be decided on their merits and not because of procedural shortcomings. Rielinger has bounced back and forth between being represented by counsel and being a *pro se* litigant. "It is well established that *pro se* litigants are presumed to have knowledge of the law and legal procedures and that they are held to the same standard as litigants who are represented by counsel." *In re Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-

5478, 3 N.E.3d 173, ¶ 22, quoting *State ex rel. Fuller v. Mengel*, 100 Ohio St.3d 352, 2003-Ohio-6448, 800 N.E.2d 25, ¶ 10, quoting *Sabouri v. Ohio Dept. of Job & Family Servs.*, 145 Ohio App.3d 651, 654, 763 N.E.2d 1238 (10th Dist. 2001).

As such, this Court will afford no greater leeway to Ms. Rielinger than a litigant who is represented by counsel.

C. The Expert Report Issue

In the re-filing of this case, Plaintiffs' expert report deadline was originally set for January 29, 2021 and was ultimately extended to May 6, 2022, allowing Plaintiffs seventeen (17) months to produce an expert report. Plaintiffs initially produced an expert report from an individual named Roy Bedard in May of 2021. In response to the production of Bedard, Defendants timely produced their expert reports on June 28, 2021 and requested to depose Plaintiffs' expert. At some point along the way, Plaintiffs decided that they did not want to use Bedard as an expert anymore.

On March 8, 2022, during a hearing with the Court where new attorneys appeared for Plaintiffs, Plaintiffs assured the Court that the only experts they were utilizing were Timothy Dimoff and David Balash. Defendants objected to any late production of expert reports, stating that it is highly prejudicial for the sequence of expert disclosures to be reversed in this manner, where a defendant's report is produced first, and then the plaintiff's report is produced.

During the March 8th hearing, the Court had the following exchange with counsel for Plaintiff:

THE COURT: Hold on. Hold on. So the expert reports, they're done. And you -- it's just a matter of whether or not I allow them in.

MR. PATTAKOS: My understanding, your Honor, is that especially with respect to Mr. Dimoff's report, that essentially it's done but Mr. Dimoff has never been able to review police testimony because the depositions haven't been taken yet. So what we would ask for is -- he's not going to be able to testify about a report when he hasn't been able to incorporate the officer's testimony. So in the next two months, look, I believe and represent on the

record -- and this could be incorporated in a court order -- that the substance of those reports and the substance of the conclusions -- and we see the Dimoff report is dated January 1st so that had been done. And we were waiting to get the discovery that Mr. Drain had moved for. So we would even submit, look, there's not going to be any surprise as to what's going to be in these reports. It's just going to incorporate the testimony of the officers to the extent that -- this is how it's supposed to be and if the officers testify in some other way. . .

Accordingly, the Court allowed Plaintiffs to produce their expert reports, giving them until May 6, 2022 to finalize them and produce them to the Defendants. On May 6, 2022, Plaintiffs produced Dimoff's expert report, dated May 6, 2022. This Court ordered stricken Dimoff's supplemental expert report, dated August 30, 2022. This report included expert opinions from Cyril H. Wecht, M.D. and David Hammons, two previously unidentified expert witnesses. Ultimately, Defendants themselves attached the August 30, 2022 "supplemental" expert report to their Motion for Summary Judgment. Regardless, even if the Court considers the August 30th report as opposed to the May 6th report, it makes no difference on its decision regarding summary judgment.

The Court also notes that Rielinger attached a report by Dimoff, dated November 3, 2022 to one of her many motions. This report will not be considered at all, as it was produced beyond the discovery cut-off and dispositive motion deadline. Moreover, Rielinger has filed several Motions for Leave to Supplement Expert Reports and attached the reports of Cyril Wecht and David Hammons to these motions. These purported expert reports address issues related to the Estate's claims, not Rielinger's personal claims. Furthermore, they are untimely. Plaintiffs had until May 6, 2022 to submit their expert reports. Plaintiff submitted the report of Timothy Dimoff. This is the sole expert report that the Court will consider. The other reports are ordered stricken from the record.

II. THE MOTION FOR SUMMARY JUDGMENT

A. Statement of the Facts

On October 28, 2016, Plaintiff Julia Rielinger and her friend Jon Liptak visited the North Royalton Police Department to request the officers to serve Jun Wang a Cuyahoga County Probate Court Order of Detention and to take him into custody and transport him to St. Vincent Charity Medical Center. The Order stated that: “[Jun Wang] is unstable and escalating. He is very angry, mumbling nonsense, confrontational, coming at sister with knife. She is afraid to go into her condo and reports she has been sleeping in her office, returning home daily to deliver food to [Jun Wang].” The Order further stated that Wang was diagnosed with schizophrenia.

Defendant Officer Jason Kimmel was dispatched by his superior to serve the Order of Detention. Officer Kimmel met with Julia Rielinger regarding the Order. Rielinger stated that there were no weapons in the house, but that there were knives in the kitchen. Officer Kimmel requested Defendant Officer Kip MacDonald to assist him in execution of the Order. Officers Kimmel and MacDonald proceeded to Julia Rielinger’s residence to execute the order. The two officers drove in separate police vehicles, and Rielinger and Liptak followed in their separate vehicle. Upon arrival at the residence, Rielinger opened the door and the Officers entered. Jun Wang was sitting on the couch in the residence. Upon seeing the officers, Wang jumped up and started yelling “No.” Wang then ran upstairs to a back bedroom. Both Officers followed Wang upstairs and found him in the back bedroom, crouched in the corner. The lights were not on in the bedroom. The Officers attempted to gain control of Wang. Officer Kimmel was able to get ahold of Wang’s right arm and get a single handcuff on Wang’s right wrist but was unable to cuff the left hand because of Wang’s resistance. Neither Officer could see Wang’s left hand at this point.

Officer Kimmel directed Officer MacDonald to pull Wang away from the wall by his legs so they could obtain access to his left arm for cuffing. Officer MacDonald attempted to do so. At this time, Wang slashed Officer Kimmel across the face with a knife that was in his left hand. Kimmel recoiled away from Wang. Wang, again, came at Officer Kimmel, this time stabbing him in the left leg, breaking off part of the knife in Kimmel's leg. The Officers testified that Wang began to come at Kimmel for a third strike. Officer MacDonald pulled his firearm and fired two shots at Wang. Wang immediately fell to the ground and the Officers handcuffed his left arm.

The two Officers advised dispatch of shots fired and requested both police and medical assistance. Officer MacDonald began CPR on Jun Wang. Shortly thereafter, other North Royalton police officers and the North Royalton Fire Department paramedics arrived and took over CPR. Jun Wang was transported to the hospital and pronounced dead shortly thereafter.

Immediately after the shooting, the Cuyahoga County Sheriff's Department was contacted and requested to conduct an investigation of the officer involved shooting. The Sheriff's detectives requested that Rielinger and Liptak be held until they could arrive and begin their investigation. Accordingly, Rielinger and Liptak were placed in the back of separate police vehicles based on that request. Rielinger and Liptak were released just before midnight.

The allegations against Defendants Officer John Elek, Lieutenant Tarase, and Lieutenant Cutler are limited to the post-shooting activities relating to Rielinger's individual claims of false imprisonment, and assault and battery. Relative to these three individual Defendants, the Amended Complaint alleges, "they were on scene and had the authority to order Plaintiffs release[d] but failed to do so."

On October 14, 2022, the North Royalton Defendants filed a Motion for Summary Judgment on all of Plaintiffs' claims:

1. Wrongful Death
2. Survivorship
3. Intentional Infliction of Emotional Distress (Rielinger)
4. False Arrest/Imprisonment (Rielinger)
5. Wanton, Willful, and Reckless Conduct
6. Assault and Battery of Jun Wang
7. Assault and Battery of Rielinger

In moving for summary judgment, the Defendants argue that: (1) the North Royalton Defendants did not breach any standard of care, (2) Rielinger is unable to produce any evidence to support her claim for intentional infliction of emotional distress, (3) Rielinger's claim for false arrest fails as a matter of law because her seizure was lawful, (4) Plaintiffs' assault and battery claims fail as a matter of law, (5) there is no cause of action under Ohio law for willful, wanton and reckless conduct and this claim fails as a matter of law, (6) the City of North Royalton is entitled to immunity under R.C. Chapter 2744, (7) the individual North Royalton Defendants are entitled to immunity, and (8) Officers MacDonald and Kimmel are entitled to immunity under R.C. 5123.34.

B. Law and Analysis

1. Summary Judgment Standard

Pursuant to Civ.R. 56(C), summary judgment is only appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) after viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and that conclusion is adverse to the nonmoving party. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 2009-Ohio-2136, 912 N.E.2d 637 (8th Dist.). "The burden of showing no genuine issue as to any material fact exists falls upon the moving party in requesting summary judgment." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64, 375 N.E.2d 46 (1978). If the movant satisfies the initial burden, then the nonmoving

party has the burden to set forth specific facts that there remain genuine issues of material fact that would preclude summary judgment. *Edvon v. Morales*, 8th Dist. Cuyahoga No. 106448, 2018-Ohio-5171, ¶ 17, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). The non-moving party may not rest upon the mere allegations or denials of the moving party's pleadings.

2. Requests for Admissions

Defendants served Requests for Admissions to Rielinger on her own behalf and as Administratrix of the Estate of Jun Wang on October 12, 2020. Ms. Rielinger and the Estate's answers to the Requests for Admissions were due on November 9, 2020. Otherwise, the admissions are deemed admitted under the Ohio Rules of Civil Procedure. Neither Ms. Rielinger nor the Estate timely answered the Requests for Admissions. As a result, the failure to timely respond conclusively establishes the matters admitted under Civ.R. 36(B). Pursuant to the express language of Civ.R. 36(A), requests for admission are "self-executing; if there is no response to a request for an admission, the matter is admitted. Unlike other discovery matters, the admission is made automatically and requires no further action by the party requesting the admissions." *Riddick v. Taylor*, 8th Dist. Cuyahoga No. 105603, 2018-Ohio-171. "Thus, once a party fails to timely respond to the requests for admissions, the defaulted admissions become fact, and a motion seeking confirmation of those admissions is unnecessary. *Riddick*, at ¶ 22. "The trial court has no discretion whether to deem the matters admitted." *Gerken v. State Auto Ins. Co. of Ohio*, 8th Dist. Cuyahoga No. 13CA14, 2014-Ohio-4428, ¶ 18.

Accordingly, the following are deemed admitted:

- Jun Wang was mentally ill;
- Jun Wang was known to have violent conduct;
- Jun Wang was not taking his medication to control his mental illness;
- She was afraid of Jun Wang;

- She requested the police assist in serving the Probate commitment papers on Jun Wang;
- She told the police she was afraid of Jun Wang;
- She suffered no economic loss from the death of Jun Wang;
- The Estate of Jun Wang suffered no economic loss from his death;
- Jun Wang slashed Officer Kimmel across the face and stabbed him in the leg before he was shot by Officer MacDonald;
- Officer MacDonald was justified in using deadly force in response to the conduct of Jun Wang in slashing the face and stabbing the leg of Officer Kimmel.
- She was never arrested on October 28, 2016.

3. **Political Subdivision Immunity (Officers Kimmel and MacDonald)**

Since the issue of immunity is dispositive of this matter, the Court will address political subdivision immunity prior to addressing the merits of Plaintiffs' claims and Defendants' remaining arguments in their Motion for Summary Judgment.

R.C. Chapter 2744, the Political Subdivision Tort Liability Act, sets forth a comprehensive statutory scheme for the tort liability of political subdivisions and their employees. *Supportive Solutions, L.L.C. v. Electronic Classroom of Tomorrow*, 137 Ohio St.3d 23, 2013-Ohio-2410, 997 N.E.2d 490, ¶ 11.

Under R.C. 2744.03(A)(6), an employee of a political subdivision will be immune from liability for "injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function," unless one of the three exceptions to that immunity applies. A governmental function includes the provision of police services. R.C. 2744.01(C)(2)(a).

R.C. 2744.03(A)(6) provides the following exceptions to immunity:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely

because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

A plaintiff bears the burden of demonstrating that the officer's actions fall within one of the three exceptions set forth in R.C. 2744.03(A)(6).

It is undisputed that the Defendant Officers were acting within the scope of their employment and official responsibility as North Royalton Officers on the evening of October 28, 2016. The Court is not aware of a section of the ORC that imposes civil liability nor do Plaintiff suggest that one exists. Therefore 2744.03(A)(6)(a) and (c) are inapplicable.

R.C. 2744.03(A)(6)(b) is the only provision that could remove immunity from the Defendants. Specifically, the individual Officers are entitled to immunity unless Plaintiffs can demonstrate that Defendants' actions were done with a malicious purpose, in bad faith, or in a wanton or reckless manner. See *Anderson v. Massillon*, 134 Ohio St.3d 380, 2012-Ohio-5711, 983 N.E.2d 266, ¶ 23.

The Amended Complaint alleges wanton and reckless conduct on behalf of the Officers. Wanton misconduct is the failure to exercise any care toward those to whom a duty of care is owed in circumstances in which there is a great probability that harm will result. *Anderson*, at paragraph three of the syllabus. Reckless conduct "is characterized by the conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances and is substantially greater than negligent conduct." *Argabrite v. Neer*, 149 Ohio St.3d 349, 2016-Ohio-8374, 75 N.E.3d 161, ¶ 8.

Plaintiff must demonstrate that the Officer's conduct was more than mere negligence. *Scott v. Kashmiry*, 10th Dist. Franklin No. 15AP-139, 2015-Ohio-3902. Thus, the question before this Court is whether the Officers acted wantonly, i.e., that they failed to exercise any care toward those

to whom a duty of care is owed under circumstances in which there is great probability that harm will result, or recklessly, i.e., that they acted with conscious disregard of or indifferent to a known or obvious risk of harm to another that is unreasonable under the circumstances that they faced.

A presumption of immunity is created by R.C. 2744.03(A)(6) and a plaintiff must provide sufficient evidence to rebut that presumption in order to avoid summary judgment. See *Cook v. City of Cincinnati*, 103 Ohio App. 3d 80, 89, 658 N.E.2d 814 (1st Dist. 1995). Summary judgment is appropriate under R.C. 2744.03(A)(6) immunity where, based on the Civ. R. 56 evidence, reasonable minds could only conclude that the employee did not act recklessly. *Id.* at ¶ 20 (the issue of whether an officer's conduct is wanton or reckless "should be submitted to a jury only when reasonable minds might differ," but where "reasonable minds could only conclude that [an officer's] conduct was, at worst, negligent," then "the issue of immunity is an appropriate issue for resolution on summary judgment"). Moreover, "the standard for proving recklessness is high, so a court may enter summary judgment in those cases where the conduct does not indicate a disposition to perversity. *Sparks v. Klempner*, 10th Dist. Franklin No. 11AP-242, 2011-Ohio-6456, ¶ 19, citing *O'Toole v. Denihan*, 118 Ohio St. 3d 374, 2008-Ohio-2574, 889 N.E.2d 505, ¶ 75.

Ohio Courts have analyzed statutory immunity claims regarding the use of force under the reasonableness standard of the Fourth Amendment. *Hayes v. City of Columbus*, 10th Dist. Franklin No 13AP-695, 2014-Ohio-2076; *Kendzierski v. Carney*, 9th Dist. Summit No. 22739, 2005-Ohio-6735. "The 'reasonableness' of a particular use of force is objective and must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396, 109 S.Ct. 1865, 104 L.E.2d 443 (1989). It must be viewed, "in light of the facts and circumstances confronting [the officer], without regard to [his] underlying

intent or motivation.” *Id.* at 397. It is not for the court to substitute its own notion of “the proper police procedures for the instantaneous decision of the officer at the scene.” *Boyd v. Baeppler*, 215 F. 3d 594, 602 (6th Cir. 2000).

Officers are entitled to use deadly force when there is a risk of serious bodily injury or death to either themselves or others. *Tennessee v. Garner*, 471 U. S. 1, 3, 105 S.Ct. 1694, 85 L.E.2d 1 (1985); *Ashford v. Betleyoun*, 9th Dist. Summit No. C.A. No. 22930, 2006-Ohio-2554; see also *Estate of Hickman v. Moore*, 502 F. App’x. 459, 468 (6th Cir. 2012).

The North Royalton policies and procedures provides the following standard on the use of lethal force: “Law enforcement officers are authorized to use lethal force to * * * protect the officer or others from what is reasonable believed to be a threat of death or seriously bodily harm * * *” *North Royalton Police Department Policies and Procedures, No. 16-005A Use of Force.*

Viewing the totality of the evidence presented in this case, Officer MacDonald acted reasonably, and in line with police department policy, when he fired his service firearm at Jun Wang. Officer MacDonald saw that Wang possessed a knife, saw Wang slash Officer Kimmel in the face, saw Wang stab Kimmel in the leg, and observed Wang starting to come at Kimmel with a third strike.

Officer Kimmel yelled “knife, knife, knife” during the incident. As Wang attempted to stab Kimmel a third time, Officer MacDonald pulled his firearm and fired two shots at Jun Wang. Thus, when Officer MacDonald fired his weapon at Wang, Officer MacDonald had probable cause to believe that Wang was armed and posed a threat of serious physical harm to Officer Kimmel and himself. Officer MacDonald witnessed Wang slash Officer Kimmel’s face, strike his leg with the knife, and reasonably believed that Wang was attempting to strike Officer Kimmel a third time.

Here, Defendants argues that there is no question that there was a threat of serious bodily harm. Instead, there was in fact, the reality of a knife attack on Officer Kimmel. Officer MacDonald employed deadly force to protect Officer Kimmel from what he reasonably believed to be further threat of death or serious bodily harm. Interestingly, Plaintiff's own expert, Timothy Dimoff, agrees that Officer MacDonald was entitled to fire his weapon based on the situation facing the officers:

Q And an officer is entitled to use deadly force when he or another have suffered or are threatened with the suffering of death or serious bodily injury, correct?

A Correct.

Q All right. And based on this knife assault, Officer Kimmel (was) subjected to either the reality or certainly the threat of serious bodily injury correct?

A Correct.

Q And in that regard, Officer MacDonald was entitled, in protecting Officer Kimmel, to pull his service duty weapon and fire the two shots he fired, correct?

A MacDonald was entitled with deadly - - with potential serious harm or deadly force to fire his weapon....

(Deposition of Timothy Dimoff, p. 63-64).

Dimoff's expert report focuses on his criticism of Officers MacDonald and Kimmel's entry into Rielinger's residence to effect the Probate Court's Order of Detention. But, the events that preceded the shooting are not material. The events before the shooting are not a factor in determining whether there was probable cause to use deadly force once they entered the bedroom. *Chappell v. City of Cleveland*, 585 F.3d 901, 914 (6th Cir. 2009), citing *Livermore ex rel. Rohm v. Lubelan*, 476 F.3d 397, 402-03 (6th Cir. 2007) (holding that evidence of recklessness by one officer in events leading up to shooting was immaterial in evaluating objective reasonableness of shooting officer's decision to use deadly force in the situation he faced at time of shooting); *Claybrook v. Birchwell*, 274 F.3d 1098, 1104-05 (6th Cir. 2001) (applying temporally segmented analysis to possibly erroneous actions taken by officers and finding error that preceded shooting

segment to be immaterial); *Boyd*, 215 F.3d at 599 (applying segmented analysis to excessive force claim in determining which facts were material); *Dickerson v. McClellan*, 101 F.3d 1151, 1161-62 (6th Cir. 1996) (holding the time frame is crucial and evaluating reasonableness of officers' use of deadly force at the time of the seizure, irrespective of their prior unreasonable conduct in creating the circumstances).

Here, the Estate does not point to any genuine issues of material fact that would preclude summary judgment based on immunity. Instead, the Estate simply states that the Officers “owed a duty of care toward Jun Wang to not act recklessly and precipitated a situation where harm was likely to result, with a conscious disregard of or indifference to a known or obvious risk of harm to another that is unreasonable under the circumstances.” *Estate’s Brief in Opposition*, pg. 11. In opposing summary judgment, the Estate attaches the affidavit of Julia Rielinger and excerpts from the deposition testimony of Officer Kimmel. The gist of the Estate’s position is that the officers should have had the fire department/EMT on the scene at the outset of their attempt to execute the Probate Order. They argue that:

“In spite of the knowledge that Kimmell (sic) possessed regarding the decedent’s mental status, his oppositional behavior, his anger, and most of all his willingness to use a knife to confront individuals, Kimmel and McDonald (sic) nevertheless stormed into the residence to summarily dispatch Jun Wang to a mental facility. They were reckless in doing so and failed to take any reasonable precautions in approaching the individual, all of which resulted in the needless death of Jun Wang.”

Plaintiffs argue that Officer Kimmel and Officer MacDonald should have approached Wang in a gentler manner, should have allowed Rielinger to translate for him so that he understood what was happening, and should have had EMS/fire personnel on the scene, instead of “rushing” through Rielinger’s condominium door. There is no Ohio law that supports this argument, and as

stated above, Courts must not focus on the events preceding the use of force in determining whether the use of force was reasonable.

Plaintiffs have failed to create a genuine issue of material fact on the issue of immunity for this matter to proceed to trial. The Court hereby finds that Officers Kimmel and MacDonald are immune from liability as to Plaintiffs' Complaint against them. Therefore, Defendants' Motion for Summary Judgment regarding Officers Kimmel and MacDonald is GRANTED.

4. **Political Subdivision Immunity (Chief Elek, Lieutenant Cutler, and Lieutenant Tarase)**

Defendants Chief Elek, Lieutenant Cutler, and Lieutenant Tarase are also entitled to immunity pursuant to R.C. 2744.03(A)(6). The involvement of Chief Elek, Lieutenant Cutler, and Lieutenant Tarase are limited to the post-shooting activities relating to Rielinger's individual claim for false imprisonment. The Amended Complaint alleges that each of these Defendants "were on scene and had the authority to order Plaintiffs release[d] but failed to do so." Rielinger was placed in the back of a police cruiser while at the scene at the request of the Cuyahoga County Sherriff's Office detectives, who conducted an investigation of the subject shooting. The Amended Complaint does not allege which officer actually placed Rielinger in the police cruiser. However, it was determined that Reserve Officer Krasniansky and Chief Elek are the ones who escorted her to Officer Krasniansky's cruiser. The allegations against Lieutenants Cutler and Tarase are limited to the fact that they could have ordered Rielinger released from the police cruiser, but failed to do so.

Applying the immunity analysis to these three officers, it is undisputed that they were all acting in the course and scope of their employment when they were on the scene after the shooting. The Court is not aware of a section of the ORC that imposes civil liability, nor do Plaintiffs suggest that one exists. Therefore 2744.03(A)(6)(a) and (c) are inapplicable. R.C. 2744.03(A)(6)(b) is the

only provision that could remove immunity from Defendants Elek, Tarase, and Cutler. These Defendants are immune unless Plaintiff Rielinger can prove that they acted wantonly or recklessly.

Plaintiff Rielinger's Brief in Opposition to Summary Judgment does not mention Chief Elek and Lieutenant Tarase at all. In her Brief in Opposition, Rielinger states that Officer Johnson and Reserve Officer Krasniansky "seized" her purse, phone and keys, and locked her in a police cruiser for over four hours, which was "reckless, wonton (sic) behavior." *Rielinger's Brief in Opposition, pg. 8*. The Brief in Opposition includes an excerpt from Lieutenant Cutler's deposition concerning the use of deadly force and police training. However, the testimony does not reveal anything about Rielinger's own claim for false imprisonment.

Plaintiff Rielinger's claims against these officers fail as a matter of law. Plaintiff can produce no evidence that any of these three officers engaged in any malicious, wanton, willful or reckless conduct. As a result, Chief Elek, Lieutenant Cutler and Lieutenant Tarase are each immune from liability. Consequently, Defendants' Motion for Summary Judgment as to Chief Elek, Lieutenant Cutler, and Lieutenant Tarase is GRANTED.

5. Political Subdivision Immunity (City of North Royalton)

A political subdivision is immune from liability incurred in performing either a governmental function or proprietary function. North Royalton was engaged in the governmental functions of providing police services or protection, preserving the public peace and the enforcement of laws. R.C. 2744.01(C)(2)(a)(b) and (i). The Plaintiffs offer no evidence of any exception to immunity under R.C. 2744 for the City of North Royalton. The Plaintiffs have not pointed this Court to any of the five exceptions to immunity in R.C. 2744.02(B) that would remove immunity from the City of North Royalton. When a political subdivision establishes general immunity, the burden shifts to the plaintiff to establish that an exception to immunity applies.

Slane v. Hilliard, 10th Dist. Franklin No. 15AP-493, 2016-Ohio-306, ¶ 30; *Sims v. Cleveland*, 8th Dist. Cuyahoga No. 92680, 2009-Ohio-4722, ¶ 15.

Accordingly, the City of North Royalton is immune from liability and Plaintiffs' claims against it are hereby dismissed as a matter of law. Consequently, Defendants' Motion for Summary Judgment as to the City of North Royalton is GRANTED.

6. Plaintiffs' Claims Fail on Their Merits

Even if this Court were to find that the Defendants were not immune from liability, each of Plaintiffs' claims fail on the merits. In opposing summary judgment, the Estate of Jun Wang did not put forth any evidence to support a wrongful death/survivorship claim. Instead, the Estate summarily argues that Officers MacDonald and Kimmel were reckless in their execution of the Probate Court Order. The non-moving party has a reciprocal burden to set forth specific facts showing there is a genuine issue for trial. Civ.R. 56(E). A nonmoving party cannot rely merely upon the pleadings or upon unsupported allegations. Civ.R. 56(E); *Shaw v. J. Pollock & Co.*, 82 Ohio App.3d 656, 659 (9th Dist. 1992). To survive a motion for summary judgment, the non-moving party must provide affirmative evidence, beyond the pleadings, of specific facts that show the existence of a genuine issue for trial. *Dresher*, 75 Ohio St.3d at 293. The Estate has failed to show that there is a genuine issue of fact for this matter to proceed to trial.

Furthermore, Rielinger has failed to produce any evidence to support her claim of intentional infliction of emotional distress, and has also failed to offer any factual or legal authority to establish her claims for false arrest, battery, and assault. Ms. Rielinger specifically states that the only contact between any officers and her was when an officer assisted her into the cruiser. *Rielinger Depo.*, pg. 101. Any alleged tort was privileged because any alleged seizure of Rielinger was lawful in furtherance of an investigation into the incident involving Jun Wang and at the

request of the Cuyahoga County Sheriff's detectives for their investigation. Consequently, Plaintiffs have failed to raise genuine issues of fact on these claims, and therefore Defendants' Motion for Summary Judgment is GRANTED.

Count Five of Plaintiffs' Complaint is for Willful, Wanton, and Reckless Conduct. Ohio courts have held that "[w]illful, wanton, and reckless conduct is technically not a separate cause of action, but a level of intent which negates certain defenses which might be available in an ordinary negligence action." *Griggy v. City of Cuyahoga Falls*, 9th Dist. Summit No. 22753, 2006-Ohio-252, ¶ 8 quoting *Cincinnati Ins. Co. v. OANCEA*, 6th Dist. Lucas No. L-04-1050, 2004-Ohio-4272, ¶ 17. As Plaintiffs have not articulated a cognizable claim under Ohio law, Defendants' Motion for Summary Judgment as to Count Five for Willful, Wanton, and Reckless Conduct is hereby GRANTED.

III. CONCLUSION

It is axiomatic that a motion for summary judgment may only be granted where there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Civ. R. 56(C). Moreover, summary judgment is inappropriate unless it appears from the evidence that reasonable minds could come to but one conclusion and that conclusion is adverse to the nonmoving party. Civ. R. 56(C).

Furthermore, in reviewing a motion for summary judgment, this Court must construe the evidence in a light most favorable to the party opposing the motion. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 322, 364 N.E.2d 267 (1977). Therefore, absent an affirmative showing by the moving party that no genuine issues exist as to any material fact, and that such party is entitled to judgment as a matter of law, no summary judgment may be granted. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

Construing all facts in favor of the Plaintiffs and finding no genuine issue of material fact remains, the Court hereby GRANTS Defendants' Motion for Summary Judgment in its entirety.

Any and all outstanding motions, including Plaintiffs' Motions to Strike Defendants' Reply Brief in Support of Summary Judgment, filed on December 11, 2022 and December 22, 2022, are hereby DENIED AS MOOT. Final.

IT IS SO ORDERED.

5/3/2023

DATE



JUDGE CASSANDRA COLLIER-WILLIAMS