IN THE COURT OF APPEALS
OF THE UNITED STATES
FOR THE SIXTH CIRCUIT

JAMES PIETRANGELO, II,
Plaintiff-Appellant,

vs.

SANDUSKY LIBRARY, et al.,
Defendants-Appellees.

CASE NO. 10-3843

APPEAL FROM THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF OHIO WESTERN DIVISION

BRIEF OF APPELLEES,
CITY OF SANDUSKY, RICK BRAUN, AND KRIS PARSONS

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to 6th Cir. R. 25, City of Sandusky, makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly-owned corporation? NO

2. Is there a publicly-owned corporation, not a party to the appeal, that has a financial interest in the outcome? YES

If the answer is YES, list the identity of such corporation and the nature of the financial interest: Buckeye Ohio Risk Management Agency, a political subdivision risk pool, and Public Entity Risk Consortium, a political subdivision risk pool, of which the City of Sandusky is a member.

__s/ William P. Lang_____ __1/10/2011_____
William P. Lang Date
Attorney for City of Sandusky

Statement of Jurisdiction

This is an appeal from a final order of the United States District Court, Northern District of Ohio, Eastern Division, pursuant to the authority granted by 28 U.S.C. §1291.

Statement of Why Oral Argument Is Not Necessary

This is an appeal by James Pietrangelo, II, arising from a claim brought under 42 U.S.C. §1983 and other theories; however, the issue on appeal involves the dismissal of his claims after his continued refusal to answer questions posed during his deposition, despite being ordered to do so by the District Court.

While the sanction of dismissal may seem to be extreme, the issue is not novel and can be fairly decided upon the briefs.

Statement of Issue for Review

Did the trial court abuse its discretion when it dismissed the claims brought by James Pietrangelo, II, for his repeated deliberate and bad faith failure to abide by a court order, without justifiable cause, to answer questions concerning the subject matter and the allegations of his complaint which were posed to him during his deposition?

Statement of the Case

James Pietrangelo, II, a resident of Sandusky, Ohio, filed an original action in the Northern District of Ohio under 42 U.S.C. § 1983 and other claims, against the Sandusky Library and its employee, Terri Estel, and the City of Sandusky and its employee-police officers, Rick Braun and Kris Parsons.

Mr. Pietrangelo sought both money damages and injunctive relief from the Sandusky police officers, the City of Sandusky, the Sandusky Library, and Terri Estel under: 1) 42 U.S.C. §§ 1983 and 1985, based upon various violations of the U.S. Constitution; 2) Ohio state law for wrongful ejectment; 3) Ohio state law under a theory of conversion; 4) Ohio state law for defamation; 5) Ohio state law for intentional infliction of emotional distress; 6) 42 U.S.C. § 1983 based upon false arrest; and 7) Ohio state law for breach of contract.

During a deposition of Mr. Pietrangelo, he refused to answer certain questions propounded to him. In accordance with the local rules of practice and a pretrial discovery order, counsel for the City of Sandusky contacted the trial court to resolve the dispute. Counsel and the certified court reporter advised the trial court of specific questions Mr. Pietrangelo admittedly refused to answer. The court ordered Mr. Pietrangelo to answer the questions that were asked and similar questions that might be asked in a long colloquy, in which Mr. Pietrangelo

acknowledged that he understood the court's order and the ramifications of his refusal to answer. When the examination re-commenced, Mr. Pietrangelo refused to answer three questions that had already been asked of him and which the District Court had ordered him to answer. Counsel for the City again contacted the court; the questions were read by the court reporter to the court; the District Court directed Mr. Pietrangelo to answer the questions. Mr. Pietrangelo again acknowledged that he understood the order of the court and the possible sanctions for his continued refusal to answer questions directly bearing upon his claims. Upon re-commencing the questioning, Mr. Pietrangelo refused to answer questions he had been directed to answer by the court, as well as a number of other questions upon the same subject matter.

After the conclusion of the deposition, motions to show cause were filed by the City of Sandusky and the Sandusky Library with supporting documentation. The issues were briefed. The trial court ordered Mr. Pietrangelo to appear and show cause why he should not be held in contempt of court for refusing to answer certain questions at the deposition. A hearing was held in open court. The court dismissed Mr. Pietrangelo's complaint and ordered him to pay costs, including attorney fees and expenses, after he refused to answer the questions, many of which were the gravamen of his case.

This appeal from the judgment of dismissal was timely filed.

On August 23, 2010, the court awarded attorney fees and expenses in a sum certain to the City of Sandusky and to Sandusky Library [R.E. #79].

An appeal of that judgment and order was timely filed with the Clerk of this Court under Case Number 10-4119; however, the appeal was dismissed on November 5, 2010 [R.E. # 89, True copy of order from the USCA for the Sixth Circuit, Case No. 10-4119, dismissing cause for want of prosecution]. In addition, it had been determined that Mr. Pietrangelo's attempt to invoke the jurisdiction of the Court, relative to the issues raised in Case No. 10-4119 by filing an Amended Notice of Appeal in the within cause was not proper [R.E. # 87, Appeal Remark from USCA for the Sixth Circuit, Case No. 10-4119, Letter from Janice E. Yates to James E. Pietrangelo, II].

The judgment of the trial court [R.E. #79], that is, the amount of attorney fees and expenses awarded by the District Court, is, therefore, *not* an issue in the instant appeal and will not be addressed by the City of Sandusky, Rick Braun, and Kris Parsons.

Statement of Facts

James Pietrangelo, II, while a resident of Sandusky, Ohio, visited the Sandusky Library, where Terri Estel was employed, on October 29, 2009, to use a computer [R.E. # 1, Complaint, ¶21].

The City of Sandusky is a municipal corporation, which operates a police force and employed Rick Braun and Kris Parsons as police officers, both of whom were acting in the scope of their employment.

On October 28, 2009, Braun and Parsons responded to a call from dispatch reporting a disorderly patron at the Sandusky Library who refused to leave the premises [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraph 2, Attached as Exhibits 1 and 2]. Braun and Parsons met with the library security guard, Mr. Jim Kelly, who directed Braun and Parsons to speak with the Assistant Director of the library, Ms. Terry Estel [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraph 3]. Ms. Estel notified both officers that the behavior of Mr. James Pietrangelo, the Plaintiff, was in breach of library policy, that she'd asked Mr. Pietrangelo to leave the library, and that Mr. Pietrangelo refused to leave [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraph 4; R. E. # 30, Estel deposition, page 47 of deposition transcript, lines 49 - 51]. Ms. Estel also advised the officers

that she believed that Mr. Pietrangelo's conduct was racially motivated [R.E. # 30, Estel Deposition, page 54 of deposition transcript, lines 17 - 19; R.E. # 59, Motion for Summary Judgment, Exhibit 3, Sandusky Police Report Incident Report SP-09-35372]. Ms. Estel stated to the officers that she would sign a trespassing charge against Mr. Pietrangelo if he continued to refuse to leave the library premises. *Ibid.*

Braun and Parsons approached Mr. Pietrangelo and advised him that if he refused to leave the library premises, the Sandusky Library may bring criminal trespassing charges against him [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraph 5]. Though initially reluctant to leave the premises, Mr. Pietrangelo did eventually leave the library. *Ibid.*

At no point was Mr. Pietrangelo arrested, searched, seized, or taken into police custody [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraphs 6 - 8]. Mr. Pietrangelo testified in a deposition that neither Braun nor Parsons arrested him, placed him in handcuffs or other physical restraining devices, instructed him to get into a police vehicle, or served him with a criminal complaint [R.E. # 33-1, Pietrangelo deposition, page 32, line 16, to page 33, line 15]. Criminal charges were never filed against Mr. Pietrangelo [R.E. # 59, Motion for Summary Judgment, Braun and Parsons Affidavits, Paragraph 9].

During the aforementioned deposition of James Pietrangelo, II, he refused to

suspend the deposition and seek a protective order [R.E. # 33-1, Pietrangelo deposition, page 32, line 16, to page 33, line 15]. And, in response to the next question concerning the contents of the complaint he filed, that is, whether he made a claim for emotional distress, Mr. Pietrangelo asserted an improper objection and refused to answer [R.E. # 33-1, Pietrangelo deposition, page 33, lines 16 - 20.].

Mr. Pietrangelo then refused to answer a series of questions concerning his mental health treatment, his mental health, physical symptoms, medication for conditions claimed in his complaint to exist, any diagnosis he received, sleep patterns, and appetite, claiming that the information sought was not "reasonably calculated to lead to the discovery of admissible evidence and [was] oppressive" [R.E. # 33-1, Pietrangelo deposition, page 34, lines 7 – 24; page 35, lines 12 – 23.].

Mr. Pietrangelo refused to answer the question: Where did you go to college? [R.E. # 33-1, Pietrangelo deposition, page 46, lines 10 - 12.]. Mr. Pietrangelo refused to answer a question concerning the type and amount of statutory damages he claimed [R.E. # 33-1, Pietrangelo deposition, page 50, lines 5 - 13; page 50, line 22 to page 51, line 4.]

In accordance with long-standing local practice, counsel for the City of Sandusky contacted the District Court in an attempt to resolve the dispute over the

relevance of the information or whether it was reasonably calculated to lead to admissible evidence.

After preliminary discussions were held with the District Court on the record, a long dialog took place between the District Court and Mr. Pietrangelo, during which the court ordered Mr. Pietrangelo to answer not only specific questions, but also questions concerning topics, subject to objection [R.E. # 33-1, Pietrangelo deposition, page 51, line 19 to page 77, line 5], including the following exchange, wherein the District Court stated:

> Sir, you should understand something. A Federal Judge's court order is to be obeyed. You do not have the option of ignoring a Federal Judge's court order. If you do so, and if upon my ordering you to show cause, you fail to show adequate cause for disobeying a direct order from me, you can expect sanctions to be imposed. Among them will be, I would anticipate, certainly it is quite possible, will be dismissal of your entire lawsuit, with prejudice. Do you understand me?
>
> MR. PIETRANGELO: Yes, I do, Your Honor.

[R.E. # 33-1, Pietrangelo deposition, page 72, lines 4 - 15].

In an obvious attempt to notify Mr. Pietrangelo of the gravity of the course Mr. Pietrangelo was planning to undertake, the District Court, in explaining possible sanctions, explicitly stated:

> JUDGE CARR: And among the other sanctions, in addition to dismissal with prejudice, may be imposition of costs and attorneys fees in favor of your opponents. Do you understand that?

MR. PIETRANGELO: Yes, Your Honor.

[R.E. # 33-1, Pietrangelo deposition, page 73, lines 6 - 11].

Finally, the District Court concluded by stating:

> You shall answer the questions. If you don't, you place yourself and the litigation in peril. That's the third or fourth time I've told you that, and you keep coming back, saying, well, I think I can make up my mind whether it's likely to lead to discoverable evidence. And I'm telling you, the questions I've heard so far are entirely proper and permissible and shall be answered. Your failure to do so will be in a direct violation of my direct order to you to answer. You shall answer. Do you understand that?

Mr. Pietrangelo replied, "*I understand your order, Your Honor*" [emphasis added] [R.E. # 33-1, Pietrangelo deposition, page 75, line 23 to page 76, line 11].

The examination of Mr. Pietrangelo re-commenced, at which time, Mr. Pietrangelo refused to answer three questions: "Mr. Pietrangelo, do you have a law license;" "Why did you move to Ohio from Vermont;" and "Have you been deposed before" [R.E. # 33-1, Pietrangelo deposition, page 77, lines 8 - 20].

Counsel for the City of Sandusky again contacted the District Court, which ordered Mr. Pietrangelo to answer the specific questions, as read back from the record by the court reporter. Mr. Pietrangelo refused to comply with the District Court's order and reiterated his intention to disobey the District Court's order concerning questions about his medical history and conditions [R.E. # 33-1, Pietrangelo deposition, page 79, line 7, to page 83, line 4].

He continued to refuse to answer questions during the examination by counsel for the Sandusky Library and Ms. Estel [R.E. # 33-1, Pietrangelo deposition, page 92, line 4, to page 96, line 9].

The District Court issued an Order to Show Cause [R.E. # 57, Order dated 5/24/10, pages 3 – 4], and after notice was served therein, conducted a hearing on June 14, 2010, upon the motions to show cause filed by the Sandusky Library and its employee, Terri Estel [R.E. # 33, Motion to Show Cause], and by the City of Sandusky and its employees, Rick Braun and Kris Parsons [R.E. # 29, Motion to Show Cause and for Sanctions, and R.E. # 38, Opposition to Motion for protective order and Supplement to Motion for Sanctions]. The District Court announced the findings of fact, analysis, and conclusions of law in open court, dismissing Mr. Pietrangelo's complaint with prejudice and awarding costs, including attorney fees, to the moving parties [R.E. # 85, Transcript of Show Cause Hearing held on June 14, 2010, before Judge James G. Carr, page 70, line 23 - page 73, line 25].

The District Court entered its Order [R. E. # 66], in which the court incorporated the findings made at the June 14, 2010, show cause hearing, and the judgment of dismissal [R. E. # 67] on June 22, 2010.

Summary of Argument

Rule 37(b) of the Federal Rules of Civil Procedure provides that if the court orders a deponent to answer a question and the deponent fails to obey, the failure may be treated as contempt of court, a possible sanction being dismissal of the action.

James Pietrangelo, II, repeatedly refused to answer questions at a deposition, was ordered to do so by the court, and failed to obey the order. Mr. Pietrangelo could offer no legally justified excuse for his refusal to answer and his failure to obey the orders of the court to answer relevant questions.

The court found Mr. Pietrangelo in contempt, upon the motions to show cause filed by the opposing parties and after a hearing in open court.

In the hearing conducted in open court, the District Court afforded Mr. Pietrangelo the opportunity to answer the questions in open court, but he refused to do so, and was further afforded the opportunity to voluntarily dismiss his claims that were the subjects of the questions propounded to Mr. Pietrangelo, but he refused to do so.

As a result, the District Court, after considering four factors, 1) whether the

refusal to comply with the orders was deliberate, willful, and in bad faith, 2) whether the refusal to comply with the orders prejudiced the opposing parties, 3) whether the refusal to comply with the orders came after an explanation of the consequences of such conduct, and 4) whether less drastic measures than dismissal were employed, finding that all of the factors were present, dismissed the complaint filed by Mr. Pietrangelo and ordered him to pay costs, including attorney fees.

The District Court properly imposed sanctions for Mr. Pietrangelo's refusal to comply with the court's order to answer specific questions and questions related thereto during his deposition.

Law and Argument and Standard of Review

Standard of Review

The District Court entered judgment for the City of Sandusky and its two police officers, Rich Braun and Kris Parsons, and the Sandusky Library and its employee, Terri Estel, after the plaintiff, James Pietrangelo, II, willfully failed to cooperate in discovery and refused repeatedly to comply with clear and unequivocal orders by the trial court to answer questions posed to Mr. Pietrangelo in a deposition.

The inquiry of the trial court was focused upon four factors: 1) whether Mr. Pietrangelo's failure was due to willfulness, bad faith, or fault; 2) whether Mr. Pietrangelo's opponents were prejudiced by the failure; 3) whether Mr. Pietrangelo was warned that his failure to cooperate and comply with the court's orders could lead to dismissal of his claims; and 4) whether the trial court considered less drastic sanctions before ordering the dismissal of Mr. Pietrangelo's claims.

The order of the District Court dismissing the action for willful failure to cooperate in discovery and for refusing to obey the court's orders is reviewed under an abuse of discretion standard. *Bass v. Jostens, Inc.*, 71 F. 3d 237, 241 (6th Cir. 1995) (citing *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639,

643 (1976)); *Reg'l Refuse Sys., Inc. v. Inland Reclamation Co.*, 842 F. 2d 150, 154 (6th Cir. 1988).

An abuse of discretion occurs only where the reviewing court has "a definite and firm conviction that the court below committed a clear error of judgment." *In re Wingerter*, 594 F. 3d 931 (6th Cir. 2010), citing *Barlow v. M.J. Waterman & Assocs., Inc. (In re M.J. Waterman & Assocs., Inc.)*, 227 F. 3d 604 (6th Cir. 2000). If a reasonable person could agree with the trial court's decision, then there is no abuse of discretion.

The District Court Did Not Abuse Its Discretion When It Dismissed the Complaint And Awarded Costs, Including Attorney Fees and Expenses

Mr. Pietrangelo Was Afforded Due Process.

The City of Sandusky, Richard Braun, and Kris Parsons moved the District Court for an Order upon James Pietrangelo, II, to appear and show cause why he should not be held in contempt of Court for his refusal to comply with the lawful orders of the District Court issued during the deposition of Mr. Pietrangelo. The relief sought was dismissal of any and all claims for disobeying the District Court's orders and for costs and expenses.

It has long been recognized that courts possess the inherent authority to hold persons in contempt. See, *United States v. Hudson*, 7 Cranch 32, 3 L.Ed. 259 (1812). A District Court has both inherent and statutory power to enforce

compliance with its orders through the remedy of civil contempt. *Shillitani v. United States*, 384 U.S. 364 (1966). Mr. Pietrangelo claims that the sanction imposed by the District Court was for criminal contempt and that he was not afforded due process by the District Court.

This Court, in *Collins on Behalf of Collins v. Barry*, 841 F. 2d 1297, 1300 (1988), pointed out that while the purpose of criminal contempt is to punish defiance of the judicial authority of a court, the beneficiaries being courts and the public interest, the purpose of civil contempt is to gain obedience to a court's order or to compensate for injury sustained by an opposing party by reason of the disobedience.

Criminal contempt proceedings are separate from a civil action from which the contumacious conduct arose, even bearing a separate caption; civil contempt proceedings are commenced as a part of the underlying action, in the main, upon motion by the offended party. *Latrobe Steel Co. v. United Steelworkers of America, AFL-CIO*, 545 F. 2d 1336, 1343 (3d Cir. 1976).

The conduct of the offending party is not the critical factor; the character of the sanctions that are sought is determinative in determining whether contempt is civil or criminal. *Shillitani, supra*. In *Shillitani*, the Supreme Court held that the conditional nature of the sentence imposed for refusal to answer questions during

grand jury testimony, that is, a two-year prison sentence with earlier release if the questions were answered, rendered the action "a civil contempt proceeding, for which indictment and jury trial are not constitutionally required," even though both the District Court and Court of Appeals called the conduct "criminal contempt."

Civil contempt proceedings can be coercive, sanctions being imposed in the form of fines or imprisonment to compel compliance, or compensatory, sanctions being imposed to indemnify the offended party for injury due to the contumacious conduct. *Coleman v. Espy*, 986 F.2d 1184, 1190 (8th Cir.), *cert. denied*, 510 U.S. 913 (1993).

It is obvious that the proceeding below, about which Mr. Pietrangelo complains vociferously, was a compensatory civil contempt proceeding. The question of imprisonment was not discussed or directly threatened. The District Court warned Mr. Pietrangelo numerous times that his lawsuit was in peril if he continued to refuse to answer questions that bore directly upon the issue of damages. Mr. Pietrangelo made disjointed and unsubstantiated arguments that opposing counsel would use the information, not in defense of the claims he sought to advance, but to embarrass him and subject him to public ridicule.

The District Court, after accepting briefs upon the issue, conducted a hearing in open court upon the motions to show cause. The District Court gave Mr.

Pietrangelo opportunities to reconsider his refusal to answer questions, going so far as to re-convene the deposition with the Court presiding in order to allay Mr. Pietrangelo's apparent fears that he would be subjected to some imagined unprofessional conduct by opposing counsel. Even then, Mr. Pietrangelo refused to disclose where he went to college and, more importantly, the nature and extent of medical treatment, although directly and unequivocally ordered to answer.

Sanctions for civil contempt are considered to be coercive and avoidable through obedience. Sanctions may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. Neither a jury trial nor proof beyond a reasonable doubt is required. *Int'l Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994).

"Contempts such as failure to comply with document discovery, for example, while occurring outside the court's presence, impede the court's ability to adjudicate the proceedings before it and thus touch upon the core justification for the contempt power. … Such judicial sanctions never have been considered criminal … ." *Bagwell*, *id*.

The District Court afforded Mr. Pietrangelo notice of the proceeding by issuing an order to show cause. The District Court afforded Mr. Pietrangelo an opportunity to be heard. The District Court afforded Mr. Pietrangelo a choice to

purge himself or face sanctions.

The District Court afforded Mr. Pietrangelo due process.

The Sanction Imposed Was Appropriate and Not an Abuse of Discretion

This Court has clearly enunciated the factors that the District Court should consider in determining whether to impose the sanction of dismissal: whether to the failure to comply was due to willfulness, bad faith, or the fault of Mr. Pietrangelo; whether the City of Sandusky, Sandusky Library, and their employees have been prejudiced; whether Mr. Pietrangelo was on notice that noncompliance could lead to an ultimate sanction; and whether lesser sanctions were appropriate. *Bank One v. Abbe*, 916 F.2d 1067, 1079 (6th Cir.1990); see, also, *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 366-67 (6th Cir. 1997).

"Although no one factor is dispositive, dismissal is proper if the record demonstrates delay or contumacious conduct." *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002).

The District Court unequivocally ordered Mr. Pietrangelo to answer specific queries, as well as questions concerning subjects, such as, his medical and psychological treatment for his claimed injury, his medical and psychological history, and his employment background, which were posed to him during the deposition of May 5, 2010. And the District Court ordered Mr. Pietrangelo to

answer specific questions during the re-convened deposition in open court on June 14, 2010.

In their motions to show cause, the movants submitted the transcript of the deposition, which proved clearly and convincingly that Mr. Pietrangelo disobeyed orders of the District Court by failing to answer specific questions he had been ordered to answer and questions concerning the subject matter of his complaint, which he had been ordered to answer, subject to any objection.

Mr. Pietrangelo refused to comply with the District Court's clear, unequivocal orders.

Mr. Pietrangelo's argument that the District Court could not conduct a telephone hearing on the record is patently absurd. Rule 16(c)(2)(L) of the Federal Rules of Civil Procedure encourages courts to adopt "special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems." Moreover, F.R.Civ.P. 16(c)(2)(P) states that the District Court may "take appropriate action … facilitating in other ways the just, speedy, and inexpensive disposition of the action."

To effect those ends, the District Court adopted Local Rules that supplement the Federal Rules of Civil Procedure. Mr. Pietrangelo may argue that the Local

Rules are in conflict with and usurp the Civil Rules' procedural devices, such as a motion for protective order; however, Local Rule 37.1 is not in conflict with the Federal Rules. It implements a procedure to achieve not only the ends mentioned above, but also the purpose of Fed.R.Civ.P. 37, as it "is designed to reduce, if not nearly eliminate the delays commonly resulting from discovery disputes." *Exact Software North America, Inc. v. Infocon, Inc.*, 479 F.Supp.2d 702 (N.D. Ohio 2006).

The scheduling order in the case at bar included the following boilerplate directive:

> No motion to compel may be filed unless the parties, as required by Local Rule 37. 1, have undertaken in good faith to resolve discovery disputes, and, if unable to do so, have contacted the court with a request for judicial resolution.

As the District Court stated in *Exact Software North America, Inc. v. Infocon, Inc.*, it has "followed the practice of requiring the parties to contact [the court] forthwith with discovery problems for about twenty-five years. In all but the most rare of instances, this method of informally resolving discovery disputes has successfully reduced delay, expense, inconvenience, and uncertainty for the parties. This method also has significantly reduced the judicial time and effort that otherwise would have been expended adjudicating formal motions to compel."

Local Rule 37.1 states, as follows:

> (a) In the absence of a Judicial Officer establishing an alternative procedure for handling discovery disputes, the following procedure shall apply.
>
> (1) Discovery disputes shall be referred to a Judicial Officer only after counsel for the party seeking the disputed discovery has made, and certified to the Court the making of, sincere, good faith efforts to resolve such disputes.
>
> (2) The Judicial Officer may attempt to resolve the discovery dispute by telephone conference.
>
> (3) In the event the dispute is not resolved by the telephone conference, the parties shall outline their respective positions by letter and the Judicial Officer shall attempt to resolve the dispute without additional legal memoranda.
>
> (4) If the Judicial Officer still is unable to resolve the dispute, the parties may file their respective memoranda in support of and in opposition to the requested discovery by a date set by the Judicial Officer, who may schedule a hearing on the motion to compel.
>
> (b) No discovery dispute shall be brought to the attention of the Court, and no motion to compel may be filed, more than ten (10) days after the discovery cut-off date.

Unfortunately, this simple and effective procedure, designed to provide an expedient shortcut to solving discovery disputes and to facilitate the just, speedy, and inexpensive disposition of the action, did not work in the case at bar. It did not work because one of the parties involved, Mr. Pietrangelo, acted in bad faith, as the best case, or was acting out of paranoia, as the worst and most likely case.

The District Court could hold a hearing on the record on the telephone, as the court did in *Wilcher v. City of Akron*, 498 F.3d 516 (6th Cir. 2007), without any disapproval by this Court.

Another of Mr. Pietrangelo's arguments against the imposition of the sanction of dismissal is that he never disobeyed any specific court order to answer a particular question because the court made no such specific orders. This might be a plausible argument if Mr. Pietrangelo had been taken by surprise by the dismissal or if it were, in fact, true. The District Court advised Mr. Pietrangelo that his objections were groundless and that, in denying his request to suspend the deposition to file a motion for protective order, a protective order, under the circumstances, had no basis in law and could not be undertaken in good faith. The court reporter read the questions, and the District Court ordered Mr. Pietrangelo to answer the specific questions.

Another of Mr. Pietrangelo's arguments against the imposition of the sanction of dismissal is that he was tired, having had only four hours of sleep. He should have gone to sleep earlier the previous evening. The alleged assault upon him, which he indicated was the cause of his lack of sleep, did not occur the evening immediately prior to the hearing upon the motions to show cause.[1]

[1] Mr. Pietrangelo has attached a copy of a common pleas court record of a felonious assault conviction of the individual who allegedly put a cigarette out on Mr. Pietrangelo's face without commenting upon same, implying that the conviction arose from the alleged assault upon Mr. Pietrangelo. A misdemeanor charge that did stem from the alleged assault upon Mr. Pietrangelo was filed in Sandusky Municipal Court and was dismissed. This attempt to mislead this Court is outrageous, but consistent with Mr. Pietrangelo's disingenuousness throughout these proceedings.

Mr. Pietrangelo claims that the District Court Judge was biased. A careful reading, neigh, a cursory reading, of the transcript of the deposition of Mr. Pietrangelo [R.E. # 33-1, at page 51, line 19, to page 77, line 5; at page 78, line 16, to page 83, line 25] and the transcript of the show cause hearing [R.E. # 85] demonstrates that the District Court was not biased and exercised great patience with Mr. Pietrangelo, permitting him time and again to argue his points, permitting him to interrupt the District Court, and explaining the possible ramifications of Mr. Pietrangelo's conduct several times. Mr. Pietrangelo indicated his understanding of the District Court's order several times. The Judge was not biased.

Mr. Pietrangelo argues further against the imposition of the sanction of dismissal by raising the perceived misconduct of counsel and perceived discriminatory animus to which he was subjected by counsel. While Mr. Pietrangelo points to several instances of perceived misconduct, his own obstreperousness and contumacious conduct engendered the evil reactions of counsel perceived by Mr. Pietrangelo. And Mr. Pietrangelo can point to no specific action, statement, or other thing that even remotely indicates that either counsel had a discriminatory animus. His accusations in this public forum are blatantly false, the result of a fabrication or delusion, and are scandalous. Such unseemly accusations, based on some feeling of Mr. Pietrangelo and conjecture,

have no place in this forum.

Mr. Pietrangelo's claim that the District Court failed to make findings of fact is groundless. The District Court announced the findings of fact, analysis, and conclusions of law in open court and incorporated them into its Order [R.E. # 66].

Mr. Pietrangelo has failed to advance any viable theory upon which this Court can rely and conclude that the District Court abused its discretion in dismissing his cause with prejudice. The District Court succinctly summarized the reasons the cause was dismissed, putting the case into perspective, when it stated:

> I believe I have gone out of my way to give you every chance and opportunity to avoid the circumstance that you find yourself in now. You have deliberately and willfully not heeded my suggestions, my recommendations, any encouragement, my instructions and my orders. You yourself are solely responsible for where you find yourself today.

[R.E. # 85, Transcript of Show Cause Hearing held on June 14, 2010, before Judge James G. Carr, page 72, lines 16 – 21].

Conclusion

It is readily apparent that a reasonable person could agree with the trial court's decision; therefore, the Court cannot have a definite and firm conviction that the District Court committed a clear error of judgment.

The District Court did not abuse its discretion in entering judgment against Mr. Pietrangelo, dismissing his claims with prejudice. Further, the District Court did not abuse its discretion in assessing costs, including attorney fees and

expenses, against Mr. Pietrangelo.

The City of Sandusky, Rich Braun, and Kris Parsons respectfully request that the judgment of the District Court be affirmed.

Respectfully submitted,

s/William P. Lang
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Appellees' Designation of Appendix Contents

The Appellees, City of Sandusky and its police officers, hereby designate the following filings in the District Court's record as items to be included in the joint appendix:

Description of Entry	Date	Record Entry
Complaint	11/2/09	1
Motion to Show Cause and for Sanctions filed by City of Sandusky	3/12/10	29
Transcript of Terri Estel Deposition	3/12/10	30
Motion to Show Cause and for Sanctions filed by Sandusky Library	3/18/10	33
Opposition to Motion for Protective Order and Supplement to Motion for Sanctions filed by City of Sandusky	3/23/10	38
Reply to Plaintiff's Opposition to Motions to Show Cause and For Sanctions filed by City of Sandusky	5/5/10	54
Order to Show Cause	5/24/10	57
Motion for Summary Judgment Exhibits 1, 2, and 3	5/28/10	59
Transcript of James E. Pietrangelo, II, Deposition	6/16/10	65
Order of Show Cause Hearing	6/22/10	66
Judgment Entry	6/22/10	67

Certificate of Service

The undersigned certifies that he has sent two copies of the foregoing BRIEF OF APPELLEES, CITY OF SANDUSKY, RICK BRAUN, AND KRIS PARSONS, to JAMES E. PIETRANGELO, II, P. O. Box 548, Avon, OH 44011, the appellant, on this 15th day of January, 2011, and that the Brief of Appellees, City of Sandusky, Rick Braun, and Kris Parsons was electronically filed on that date. Notice of filing will be sent to all parties by the operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/William P. Lang
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Certification of Word Count

The undersigned certifies that the word count of this document is 6,372 for the entire document, according to the Microsoft Word program and that the typeface is moonfaced, Times New Roman, 14-point; and the principal brief is less than 1300 lines.

s/William P. Lang
WILLIAM P. LANG