[Cite as *Hicks v. Cadle Co.*, 2019-Ohio-5049.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

KERRY R. HICKS,	:	**O P I N I O N**
Plaintiff-Appellee,	:	
- vs -	:	**CASE NOS. 2018-T-0048** **2019-T-0023**
THE CADLE COMPANY, et al.,	:	
Defendants-Appellants,	:	
THE HOME SAVINGS AND LOAN COMPANY OF YOUNGSTOWN, OHIO,	:	
Intervening Defendant.	:	

Civil Appeals from the Trumbull County Court of Common Pleas.
Case No. 2011 CV 01148.

Judgment: Affirmed.

John T. Dellick, Harrington, Hoppe & Mitchell, Ltd., 26 Market Street, Suite 1200, P.O. Box 6077, Youngstown, OH 44501; *Kris J. Kostolansky*, Lewis Roca Rothgerber Christie LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, CO 80202; *Christopher S. Williams* and *Ronald M. McMillan*, Calfee, Halter & Griswold, LLP, 1405 East Sixth Street, Cleveland, OH 44114 (For Plaintiff-Appellee).

F. Dean Armstrong, Armstrong Law Firm, 23353 S. 88th Avenue, Frankfort, IL 60423 and *Victor O. Buente, Jr.*, Cadle Company, 100 North Center Street, Newton Falls, OH 44444 (For Defendants-Appellants).

TIMOTHY P. CANNON, J.

{¶1} Before this court are two consolidated appeals brought by three appellants: Daniel C. Cadle ("Mr. Cadle"), The Cadle Company, and United Joint Venture Limited

Partnership (jointly referred to as "the Cadle parties"). The Cadle parties challenge an April 19, 2018 judgment of the Trumbull County Court of Common Pleas, which granted summary judgment in favor of appellee, Kerry R. Hicks ("Mr. Hicks"), on the Cadle parties' amended counterclaim. The Cadle parties had set forth three causes of action, alleging Mr. Hicks (1) violated Ohio's Pattern of Corrupt Activity Act, (2) intentionally inflicted emotional distress upon Mr. Cadle, and (3) tortiously interfered with their business relations with The Home Savings and Loan Company of Youngstown, Ohio ("Home Savings"). The Cadle parties further challenge the trial court's March 21, 2019 decision to grant Mr. Hicks' motion for attorney fees, costs, and expenses against the Cadle parties, jointly and severally. For the reasons that follow, the judgment is affirmed.

{¶2} The Cadle parties raise the following two assignments of error for our review:[1]

> [1.] The Trial Court committed prejudicial error in granting Counter-Defendant/Appellee's Converted Motion for Summary Judgment where (a) Hicks did not make a sufficient summary judgment challenge to each of the claims asserted in Counter-Plaintiffs/Appellants' Amended Counterclaims; and (b) disputed issues of material fact precluded entry of summary judgment on each of the claims asserted in the Amended Counterclaim.

> [2.] The Trial Court committed prejudicial error in granting Counter-Defendant/Appellee Hicks' Motion for Sanctions against the Cadle Parties where (a) the Counter-Plaintiffs/Appellants had a good faith basis for the assertion of the claims set forth in their Amended Counterclaims; and (b) Hicks failed in his burden to prove the amount of fair, reasonable and necessary legal fees and expenses that he incurred in defending against the Amended Counterclaims.

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1. The Cadle parties are each represented by the same attorneys who filed joint notices of appeal on their behalf. Thus, the parties should have proceeded herein as a single appellant. *See* App.R. 3(B) ("If two or more persons are entitled to appeal from a judgment or order of a trial court and their interests are such as to make joinder practicable, they may file a joint notice of appeal, * * * and they may thereafter proceed on appeal as a single appellant."). Each party, however, filed an individual appellate brief with this court. The above assignments of error are recited from Mr. Cadle's brief. The assignments of error in The Cadle Company's and United Joint Venture's briefs are identical to Mr. Cadle's but are limited to the tortious interference claim against Mr. Hicks.

I. Substantive and Procedural Overview

{¶3} Mr. Cadle is the owner and director of The Cadle Company, which is an investment/debt collection company in Ohio. The Cadle Company is the only general partner and registered agent of United Joint Venture Limited Partnership ("United Joint Venture"), which is also a debt collection company in Ohio. Buckeye Retirement Co., LLC ("Buckeye Retirement") apparently exists as an "alter ego" of the Cadle parties and is another Ohio debt collection company.

{¶4} Mr. Hicks, at all times relevant, was the controlling stockholder/president of Health Grades, Inc. ("Health Grades"). Health Grades is a publicly traded corporation that provides rating and consulting services for hospitals and physicians throughout the United States. At some point during the parties' litigious interaction, Mr. Cadle became a registered stockholder of Health Grades.

{¶5} Mr. Hicks and Patrick Jaeckle ("Mr. Jaeckle") obtained a loan from Bank of America on or about December 31, 1999, in the amount of $3,550,000.00. Mr. Hicks was a signator on the original promissory note. In 2002, Buckeye Retirement purchased the balance that remained on the note from Bank of America.

{¶6} In September 2003, Buckeye Retirement attempted to collect what it claimed was the outstanding balance due on the note by filing suit against Mr. Hicks in a Tennessee federal district court. Mr. Hicks contested his personal liability for the balance that remained on the note. Mr. Hicks' position was that, pursuant to an agreement with Bank of America, he was individually liable for $2 million; Mr. Jaeckle, another signator, was individually liable for $1 million; Mr. Hicks and Mr. Jaeckle were jointly liable for $350,000.00; and two other individuals were each individually liable for $100,000.00. Mr.

Hicks claimed that the balance owed on the note was Mr. Jaeckle's individual obligation. The note was eventually repurchased by Bank of America, and the Tennessee lawsuit was dismissed.

{¶7} Mr. Hicks filed a lawsuit in Colorado against Mr. Cadle, The Cadle Company, Buckeye Retirement, and others, alleging vexatious and frivolous litigation, abuse of process, defamation, and intentional infliction of emotional distress ("IIED"). The promissory note contained a provision requiring binding arbitration of any controversy or claim based on or arising from any alleged tort. Thus, it eventually transpired that three separate arbitration proceedings between the parties took place in Colorado. Mr. Hicks was successful in all three phases of arbitration.

{¶8} In 2005, an arbiter awarded Mr. Hicks $400,000.00 in compensatory damages for his claims of abuse of process and IIED, plus $15,578.36 in attorney fees ("Phase I").

{¶9} In 2007, an arbiter awarded Mr. Hicks $950,000.00 in compensatory damages for his claims of defamation and additional IIED, plus $960,000.00 in punitive damages for willful and wanton conduct ("Phase II").

{¶10} While Phases I and II were pending, allegations of tortious and criminal misconduct, including bank fraud and perjury, were lodged against Mr. Hicks. Mr. Cadle, as president of The Cadle Company, sent letters to the attorneys general for Tennessee and Colorado, as well as to Health Grades' board of directors. Mr. Hicks was granted leave to amend his complaint and compel arbitration, in which he asserted the same claims and sought damages for the newly alleged conduct.

{¶11} In 2010, an arbiter awarded Mr. Hicks $1,250,000.00 in compensatory damages for defamation and IIED, plus $1,900,000.00 in punitive damages ("Phase III").

{¶12} The Cadle parties began negotiating with Home Savings to refinance an outstanding debt. Mr. Hicks became concerned that funds from Mr. Cadle's IRA account would be used to pay Home Savings and, as a result, would jeopardize Mr. Cadle's ability to satisfy the Phase III arbitration award. To prevent this, Mr. Hicks registered his arbitration award in the United States District Court for the Northern District of Ohio and obtained writs of execution.

{¶13} Additionally, in May 2011, Mr. Hicks filed an action against the Cadle parties in the Trumbull County Court of Common Pleas. He sought declaratory judgment and injunctive relief to prevent the Cadle parties from transferring Mr. Cadle's assets and to enforce the award. Mr. Hicks was granted a temporary restraining order, but his motion for a preliminary injunction was denied. The Cadle parties then paid the arbitration award, and Mr. Hicks voluntarily dismissed his claims.

{¶14} In the meantime, however, the Cadle parties had filed a counterclaim against Mr. Hicks, which is the subject of this appeal. Mr. Cadle individually alleged violations of Ohio's Pattern of Corrupt Activity Act (R.C. 2923.31, et seq.) and intentional infliction of emotional distress. The Cadle parties jointly alleged tortious interference with their business relations with Home Savings.

{¶15} Mr. Hicks attempted to compel arbitration, which was denied by the trial court and affirmed on appeal. *Hicks v. Cadle Co.*, 11th Dist. Trumbull No. 2013-T-0017, 2014-Ohio-872. Thereafter, the trial court granted summary judgment on the Cadle parties' counterclaim in favor of Mr. Hicks, which was reversed on procedural grounds.

Hicks v. Cadle Co., 11th Dist. Trumbull No. 2014-T-0103, 2016-Ohio-4728. The matter was remanded to the trial court for further proceedings.

{¶16} On remand, the trial court permitted the parties to conduct reasonable additional discovery and granted the parties time to file any supplemental responses or replies to Mr. Hicks' motion for summary judgment. On April 19, 2018, the trial court granted Mr. Hicks' motion and entered summary judgment in his favor. The trial court found no genuine issues of material fact remained for trial on any of the claims asserted by the Cadle parties, who noticed an appeal from this entry.

{¶17} On May 18, 2018, Mr. Hicks filed with the trial court a Motion to Recover Attorneys' Fees, Costs and Expenses, pursuant to R.C. 2323.51 and Civil Rule 11. He sought over $1,000,000.00 in sanctions from the Cadle parties and their counsel. Mr. Hicks then filed with this court a motion to stay the appeal and to remand the matter to the trial court to rule on his motion, which was granted.

{¶18} On remand, the trial court held an evidentiary hearing and, on March 21, 2019, found the motion well taken. The trial court assessed as sanctions against the Cadle parties, jointly and severally, the sum of $1,130,811.50 in legal fees and $12,278.90 in costs. They were also ordered to pay for the costs of the action in its entirety. The Cadle parties noticed an appeal from this entry. The previous stay was lifted, and the matters were consolidated for appellate review.

II. Motion for Summary Judgment

{¶19} In their first assignment of error, appellants contend the trial court erred in granting Mr. Hicks' motion for summary judgment.

{¶20} "'Summary judgment is a procedural device to terminate litigation and to avoid a formal trial when there is nothing to try. It must be awarded with caution[.]'" *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 358 (1992), quoting *Norris v. Standard Oil Co.*, 70 Ohio St.2d 1, 2 (1982). An appellate court reviews a trial court's decision to grant summary judgment under a de novo standard of review, i.e., "independently and without deference to the trial court's determination." *Brown v. Cty. Commrs. of Scioto Cty.*, 87 Ohio App.3d 704, 711 (4th Dist.1993) (citation omitted); *see also Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996).

{¶21} "Civ.R. 56(C) specifically provides that before summary judgment may be granted, it must be determined that

> (1) [n]o genuine issue as to any material fact remains to be litigated; (2) the moving party is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

Temple v. Wean United, Inc., 50 Ohio St.2d 317, 327 (1977); *see also Murphy*, *supra*, at 359 ("Doubts must be resolved in favor of the non-moving party.").

{¶22} The rule further provides that "[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Civ.R. 56(C).

{¶23} "[A] party seeking summary judgment, on the ground that the nonmoving party cannot prove its case, bears the initial burden of informing the trial court of the basis for the motion, and identifying those portions of the record that demonstrate the absence

of a genuine issue of material fact on the essential element(s) of the nonmoving party's claims." *Dresher v. Burt*, 75 Ohio St.3d 280, 293 (1996). "If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied." *Id.*

{¶24} If this initial burden is met, the nonmoving party then bears the reciprocal burden to set forth specific facts demonstrating there is a genuine issue for trial. *Id.*, citing Civ.R. 56(E). If the nonmovant fails to do so, summary judgment will be entered against the nonmoving party. *Id.*

{¶25} Appellants assert that Mr. Hicks failed to meet his initial summary judgment burden and that disputed issues of fact precluded summary judgment as to each claim brought in their counterclaim, to wit: violations of Ohio's Pattern of Corrupt Activity Act, intentional infliction of emotional distress, and tortious interference with business relations.

A. Pattern of Corrupt Activity

{¶26} In Count One of the amended counterclaim, Mr. Cadle accused Mr. Hicks of causing him injury by engaging in a pattern of corrupt activity ("PCA"), in violation of R.C. 2923.32(A)(1). The statute provides that "[n]o person employed by, or associated with, any enterprise shall conduct or participate in, directly or indirectly, the affairs of the enterprise through a pattern of corrupt activity or the collection of an unlawful debt." Although R.C. 2923.32 is a criminal statute, R.C. 2923.34(A) permits the filing of a private civil suit by "[a]ny person who is injured or threatened with injury by a violation of R.C. 2923.32."

{¶27} In order to succeed on his PCA claim, Mr. Cadle was required to prove by a preponderance of the evidence, as the following terms are defined in R.C. 2923.31, that

(1) Mr. Hicks was associated with an "enterprise" through which (2) Mr. Hicks was involved in two or more instances of "corrupt activity" that (3) comprised a "pattern of corrupt activity," which (4) proximately caused injury to Mr. Cadle. *See Salata v. Vallas*, 159 Ohio App.3d 108, 2004-Ohio-6037, ¶10 (7th Dist.); *Turchyn v. Nakonachny*, 157 Ohio App.3d 284, 2004-Ohio-2692, ¶5 (8th Dist.); *Herakovic v. Catholic Diocese of Cleveland*, 8th Dist. Cuyahoga No. 85467, 2005-Ohio-5985, ¶31-32, following *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 268-269 (1992).

{¶28} "Corrupt activity," as defined in R.C. 2923.31(I), "means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in" prohibited state or federal criminal offenses as provided in subsections (1) through (5). These "corrupt activities" are also referred to as "predicate offenses" or "predicate acts." *See Matthews v. New Century Mtge. Corp.*, 185 F. Supp.2d 874, 892 (S.D.Ohio 2002) and *State v. Morgan*, 71 Ohio St.3d 178 (1994).

{¶29} Mr. Cadle alleged that Mr. Hicks had committed five predicate acts: mail fraud, perjury, extortion, retaliation, and interstate racketeering. He asserted Mr. Hicks committed these acts in association with Health Grades—an alleged association Mr. Cadle refers to as the "Punish Cadle Enterprise."

{¶30} In his converted motion for summary judgment, Mr. Hicks asserted that no competent evidence existed that he had committed any of the predicate acts or that his association with Health Grades constituted an "enterprise." Mr. Cadle came to agree, in response, that summary judgment was warranted for the predicate act of mail fraud.

{¶31} With regard to the remaining four alleged predicate acts, the trial court concluded (1) Mr. Hicks successfully demonstrated that Mr. Cadle could not sustain a

claim for any of them, and (2) Mr. Cadle failed to meet his reciprocal burden to establish that genuine issues of material fact remained for trial. Mr. Cadle challenges these holdings on appeal.

1. Perjury

{¶32} Mr. Cadle accused Mr. Hicks of committing perjury—a corrupt activity under R.C. 2923.31(I)(2)(a)—in violation of R.C. 2921.11(A):

> No person, in any official proceeding, shall knowingly make a false statement under oath or affirmation, or knowingly swear or affirm the truth of a false statement previously made, when either statement is material.

{¶33} In May 2007, Mr. Hicks was granted the Phase II arbitration award against Mr. Cadle.

{¶34} The following month, on June 19, 2007, Mr. Hicks filed a verified form complaint against Mr. Cadle in a Colorado county court seeking a civil protection order ("CPO") on behalf of himself, as well as his father, wife, and minor daughter. In the complaint, Mr. Hicks stated, inter alia, the following: Mr. Cadle repeatedly stated under oath and during arbitration that he wants Mr. Hicks to "rot in hell"; during cross-examination in the arbitration, Mr. Cadle asked Mr. Hicks to divulge the address of his daughter's school, for which there was no legitimate reason; Mr. Cadle admittedly purchased stock in Health Grades to spy on and retaliate against Mr. Hicks; Mr. Cadle brought Mr. Hicks' wife and parents into the litigation in order to cause them emotional distress.

{¶35} The arbiter's Phase II decision was also attached to the CPO complaint, which included the following findings with regard to Mr. Cadle's behavior towards Mr. Hicks: (1) "Cadle's filings all confirm a premeditated and willful intent to harm Hicks"; (2)

a previous perjury allegation against Mr. Hicks was “without merit and used to retaliate and intimidate Hicks and his counsel”; (3) “Hicks fears for his family, his own well-being and his personal safety”; (4) “[The Cadle parties] have brought [Hicks’] wife and parents into this litigation. Hicks has a legitimate fear that Cadle will not stop his efforts until Hicks is destroyed financially, psychologically and personally”; (5) “the totality of the statements and actions of [the Cadle parties] constitute conduct that goes beyond all bounds of decency and is considered atrocious and intolerable in a civilized community.”

{¶36} After an ex parte hearing, a temporary CPO was issued on the day the complaint was filed, which required Mr. Cadle to stay 250 yards away from Mr. Hicks, as well as his father, wife, and minor daughter. The order also excluded Mr. Cadle from the Health Grades office in Colorado.

{¶37} On July 20, 2007, following a two-day evidentiary hearing, the Colorado court issued a permanent CPO, identical to the temporary order except that it only identified Mr. Hicks as a protected party, not his family members. The permanent CPO was upheld on appeal.

{¶38} In the case at hand, Mr. Cadle alleged that Mr. Hicks committed perjury in connection with the CPO proceeding by falsely stating under oath that Mr. Hicks’ wife and minor daughter were “victims” of “stalking” and “physical assault” by Mr. Cadle; that they were “in imminent danger”; that Mr. Cadle would harm their “life or health”; and that it was essential to obtain an emergency CPO to restrain Mr. Cadle from “attacking, beating [or] molesting” them.

{¶39} Mr. Hicks, in his converted motion for summary judgment, explains that these quoted phrases are taken from the pre-printed form complaint he filled out for the CPO. A copy of the form is attached to his motion and states (underscore provided):

> "I, Kerry R. Hicks request this Court to issue a Civil Protection Order, and in support of this request state the following:
>
> "1. I am seeking this Civil Protection Order as a victim of the following," after which the following two boxes are checked off: "Stalking (18-9-111(4) to (6), C.R.S.); Physical Assault, Threat or other situation."
>
> * * *
>
> "5. I believe that I and/or the other Protected Parties named in this action are in imminent danger from Daniel C. Cadle," after which the following box is checked off: "Harm to my/our life or health if he/she is not restrained as requested."
>
> * * *
>
> "7. I request the following relief from the Court that Daniel C. Cadle," after which the following box, among others, is checked off: "a) Be ordered to refrain from attacking, beating, molesting, intimidating, and verbally harassing me, following me, threatening my life, or threatening me with serious bodily injury." [Emphasis added.]

{¶40} In other words, Mr. Cadle chose certain phrases (those underscored above) from the preprinted options on the form complaint, which are listed inclusively in the same box with alternative phrases, in order to allege that Mr. Hicks committed perjury by checking those boxes. There is no indication on the complaint, for example, that Mr. Hicks accused Mr. Cadle of "attacking, beating, molesting" as opposed to "intimidating, and verbally harassing," or that Mr. Hicks accused Mr. Cadle of "physical assault" as opposed to "threat or other situation."

{¶41} The boxes on the form complaint include a wide variety of possible behavior by the accused. Obviously, the accusations must be further vetted in a hearing on the

requested CPO, either ex parte or contested, whichever is warranted. The Colorado court did hold an ex parte hearing prior to issuing the temporary CPO, which protected all named parties, and it held a contested hearing prior to issuing the permanent CPO, which protected Mr. Hicks. Clearly, therefore, the information provided in the form complaint was supported by whatever evidence or testimony was offered at those hearings; some was sufficient to support a temporary order protecting Mr. Hicks' family, and some was sufficient to support a permanent order protecting Mr. Hicks. In the summary judgment exercise, Mr. Cadle did not provide any evidence that Mr. Hicks committed perjury in these hearings by alleging Mr. Cadle "physically assaulted" anyone or that he "attacked, beat, or molested" anyone. Mr. Cadle repeatedly states that Mr. Hicks' motivation for obtaining the CPO was to embarrass him and have him physically restrained. Regardless of Mr. Hicks' motivation, however, Mr. Cadle has not provided any evidence that Mr. Hicks committed perjury by checking certain boxes on the form complaint.

{¶42} We conclude that (1) Mr. Hicks met his initial burden to demonstrate the absence of a genuine issue of material fact on Mr. Cadle's claim of perjury as a predicate act; and (2) Mr. Cadle did not meet his reciprocal burden to set forth specific facts demonstrating a genuine issue for trial on the act of perjury.

2. Extortion

{¶43} Mr. Cadle accused Mr. Hicks of committing extortion—a corrupt activity under R.C. 2923.31(I)(2)(a)—in violation of R.C. 2905.11(A):

> No person, with purpose to obtain any valuable thing or valuable benefit or to induce another to do an unlawful act, shall do any of the following: * * * (4) Utter or threaten any calumny against any person; (5) Expose or threaten to expose any matter tending to subject any person to hatred, contempt, or ridicule, or to damage any person's personal or business repute, or to impair any person's credit.

{¶44} In the amended counterclaim, Mr. Cadle generally alleged the following:

> As set forth above, in the summer of 2007; late fall of 2007; summer of 2009; summer of 2010; and then again in November of 2011, Hicks, with the purpose of obtaining money, property or other valuable benefits from Mr. Cadle, (a) uttered calumny * * * against Mr. Cadle * * *; (b) exposed matters tending to subject Mr. Cadle to hatred, contempt or ridicule * * *; (c) exposed matters tending to damage Mr. Cadle's personal or business repute * * *; and (d) exposed matters tending to impair Mr. Cadle's credit * * *.

{¶45} In response to Mr. Hicks' assertion that Mr. Cadle failed to sufficiently plead this claim, Mr. Cadle refers to the following factual paragraphs in the amended counterclaim:

> Hicks does not have, and never had any claims against Mr. Cadle's daughter * * *. Hicks knew, however, that Mr. Cadle loved his family more than anything in this world. As a consequence, Hicks was of the belief that if he could make vague threats to Mr. Cadle about Hicks' ability to stir up trouble with the IRS over [Mr. Cadle's daughter's] IRA, Hicks could then extort valuable benefits from Mr. Cadle.
>
> Pursuant to this plan, on November 11, 2011 Hicks caused the transmission of a letter to be sent by e-mail over interstate wires and other facilities in interstate commerce from Colorado to Mr. Cadle's attorney, Victor Buente, in Ohio which threatened 'significant ramification[s]' to Mr. Cadle's daughter * * * if Mr. Cadle continued with the prosecution of his Counterclaims against Hicks. In that letter, Hicks threatened Mr. Cadle that if he (Mr. Cadle) did not drop the Cadle Parties' Counterclaims herein against Hicks, the 'ramification' would be that Hicks would take all steps necessary to make certain that the IRS would examine the validity of [Mr. Cadle's daughter's] IRA, which could leave Mr. Cadle's daughter subject to not only millions of dollars in fines, but also criminal prosecution. Hicks' wrongful conduct was malicious and spiteful toward Mr. Cadle; was designed to cause Mr. Cadle severe emotional distress; was part of Hicks' plan and desire to obtain money, property or other valuable benefits from Mr. Cadle; and constitutes extortion under O.R.C. §2905.11.

{¶46} On November 11, 2011, while this lawsuit was pending, Mr. Hicks' counsel sent a letter by e-mail to Mr. Cadle's counsel, titled "confidential settlement communication pursuant to rule 408," suggesting the parties enter into a "cessation agreement." Mr. Hicks attached a copy of this letter to his converted motion for summary judgment.

{¶47} The letter highlighted what is referred to as "but one of the future areas of exposure to Mr. Cadle," should Mr. Cadle insist on proceeding with the counterclaim, namely the alleged misuse of IRAs owned by Mr. Cadle, his wife, and his daughter. The letter states that this information would become relevant because the IRAs would no longer be exempt from execution under Ohio law. Specifically, it reads: "Discovery regarding the actions of Mr. Cadle's IRA will be relevant to the pending and proposed claims irrespective of the forum in which they are decided; and, once it is determined that the IRA's are tainted, significant ramification will follow as a matter of course."

{¶48} Mr. Hicks argues that Mr. Cadle cannot succeed on this claim because he mischaracterizes the contents and intent of the letter in such a way that is not based on fact—the letter never mentions the IRS or criminal prosecution, nor does it threaten to expose the misused IRAs. Further, he argues, a threat to pursue civil action does not constitute extortion.

{¶49} Mr. Cadle relies on his own affidavit, in which he avers that Mr. Hicks threatened "significant ramification[s]" to himself and his daughter by causing the letter to be sent. Mr. Cadle further avers that those "'ramifications' (*as understood by me*) would be that Hicks would take all steps necessary to make certain the IRS would examine the validity of my IRA and [my daughter's] IRA, which could leave me and my daughter

subject to not only millions of dollars in fines but also criminal prosecution." (Emphasis added.)

{¶50} On appeal, Mr. Cadle continues to assert that the letter is sufficient evidence of extortion. He argues genuine issues of material fact remain as to (1) whether Mr. Hicks sought to obtain anything of value and (2) whether the letter was more than a simple threat to file civil litigation.

{¶51} Under R.C. 2905.11(A), "any valuable thing or valuable benefit" may include the intangible, such as the cessation of a civil lawsuit. *See*, *e.g.*, *State v. Kopras*, 7th Dist. Jefferson No. 17 JE 0007, 2018-Ohio-2774, ¶36 ("Based on the plain meaning of those words, however, the application of the extortion statute is clearly not limited to the effort to obtain only things and benefits having a pecuniary value."); *State v. Cunningham*, 178 Ohio App.3d 558, 2008-Ohio-5164, ¶17 (2d Dist.) ("It matters not that the thing sought is intangible.").

{¶52} Nevertheless, Mr. Cadle cannot succeed on his claim of extortion merely based on his subjective interpretation of the letter as a "thinly veiled threat of IRS prosecution." Mr. Cadle has provided absolutely no evidentiary support for any interpretation other than that the letter was an attempt to reach an agreement for a mutual stand down in what had become protracted and repetitive litigation between the parties for nearly a decade.

{¶53} Further, any "threat" by Mr. Hicks, via his attorney, was one to pursue a civil claim for abuse of process and Rule 11 violations, should Mr. Cadle refuse to be part of a cessation agreement. As a matter of law, this does not amount to extortion. "It is well settled * * * that a threat to pursue a civil action, even if the action would be entirely

frivolous or brought in bad faith, does not constitute extortion." *Tilberry v. McIntyre*, 135 Ohio App.3d 229, 241 (8th Dist.1999) (citations omitted); *accord Sullivan v. Tuschman*, 6th Dist. Lucas No. L-06-1373, 2007-Ohio-3569, ¶15.

{¶54} We conclude that (1) Mr. Hicks met his initial burden to demonstrate the absence of a genuine issue of material fact on Mr. Cadle's claim of extortion as a predicate act; and (2) Mr. Cadle did not meet his reciprocal burden to set forth specific facts demonstrating a genuine issue for trial on the act of extortion.

3. Retaliation

{¶55} Mr. Cadle accused Mr. Hicks of committing retaliation—a corrupt activity under R.C. 2923.31(I)(1)—in violation of 18 U.S.C. 1513(e):

> Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

{¶56} On May 30, 2007, Health Grades mailed an invitation to all stockholders to attend and vote at the corporation's annual stockholders meeting. Mr. Cadle received the invitation, as he was a stockholder at that time. The meeting was to be held at Health Grades' headquarters in Colorado on June 20, 2007.

{¶57} In the meantime, on June 4, 2007, Mr. Cadle sent letters to various government officials, including the IRS and the attorneys general for the states of Colorado, Tennessee, California, and Ohio. In these letters, Mr. Cadle detailed possible bank fraud purportedly committed by Mr. Hicks. He wrote the following:

> I have a very unusual loan situation to which I need some direction. According to information that has been gathered, a borrower and a loan officer of a bank entered into a side agreement to relieve the

> borrower from personal obligation on a note that was issued in his own name and not in any corporate name. In arbitration, the Arbitrator issued the following ruling:
>
> > 'Here, the record is replete with evidence that BOA senior vice president Walter Choppin made an oral agreement with the claimant Kerry Hicks to limit Hicks' liability to $2 million and not to also obligate him on the $1 million loan to Patrick Jaeckle.'
>
> This paragraph does not recite that the bank's corporate officers stated at the hearings and in depositions that the bank was not aware of any side agreement and that the books and records of the bank indicated that there was no side agreement.
>
> I would like for you to issue a Private Letter Opinion as to whether one would consider the testimony and ruling to indicate that bank fraud may have occurred and I would like a second Opinion as to where or whom a citizen should report such an alleged crime.
>
> I would like an additional Opinion as to whether I can get into personal trouble for reporting this alleged crime to your office or other government agencies.

{¶58} Later that month, Mr. Cadle travelled to Colorado to attend the Health Grades stockholders meeting on June 20, 2007. Mr. Hicks was also present for the meeting. The police arrived, and Mr. Cadle was served with the temporary CPO that Mr. Hicks had obtained the day prior. The parties disagree as to whether Mr. Cadle was physically restrained or left of his own volition.

{¶59} In the amended counterclaim, Mr. Cadle alleged that he was "lured" by Mr. Hicks from Ohio to Colorado in order to be served with the temporary CPO "in retaliation for Mr. Cadle providing law enforcement officers with truthful information about the possible commission of a federal offense."

{¶60} Mr. Hicks, in his converted motion for summary judgment, asserts that Mr. Cadle cannot succeed on this claim because it is barred by res judicata and collateral

estoppel. Mr. Hicks argues the issue of whether Mr. Cadle provided "truthful information" was already determined in the arbiters' decisions, specifically, that Mr. Hicks did not commit bank fraud and that Mr. Cadle's allegations were made with neither a reasonable objective or subjective belief that they were true. Mr. Hicks further asserts that Mr. Cadle cannot demonstrate an intent to harm based on the service of a lawfully obtained CPO, nor can Mr. Cadle demonstrate that he suffered any redressable harm as the result of said service.

{¶61} Mr. Cadle responds that the gist of his retaliation claim is the *manner* in which he was served with the temporary CPO: by the police, without prior notice, and after travelling from Ohio to Colorado at the invitation of Health Grades. Mr. Cadle admits, however, that it was Mr. Hicks' counsel, not Mr. Hicks himself, who actually had the temporary CPO served on Mr. Cadle.

{¶62} The summary judgment evidence in no way supports Mr. Cadle's claim. First, Mr. Cadle provides no evidentiary support for his assumption that Mr. Hicks directed or approved the manner in which his counsel chose to effect service of process. Second, Mr. Hicks could not have "lured" Mr. Cadle to Colorado by virtue of the stockholder invitation as retaliation, as it was mailed five days *before* Mr. Cadle sent his letters to the government officials.

{¶63} Third, Mr. Cadle has not provided any support for his repeated claim that the information in his letters to the government officials was "truthful." Mr. Cadle attempts to make a disingenuous distinction between (1) allegations related to the commission of a federal offense and (2) truthful information related to the possible commission of a federal offense. The inference of Mr. Cadle's letters is apparent: he believes Mr. Hicks

may have committed bank fraud. The arbiters' decisions very clearly held, however, that Mr. Hicks did *not* commit bank fraud. That issue has been resolved. Further, the Phase II arbiter found that Mr. Cadle's allegations of bank fraud were not truthful: "When pressed, Cadle testified that he did not know or care whether Hicks committed bank fraud, but that he will nonetheless continue his crusade against Hicks. Cadle has also testified that Hicks committed perjury and not bank fraud. Despite acknowledging that Hicks did not commit bank fraud, Cadle continued to allege that he did." Mr. Cadle also admitted in the summary judgment exercise that he did not have a reasonable objective or subjective belief that Mr. Hicks had, in fact, committed bank fraud.

{¶64} We conclude that (1) Mr. Hicks met his initial burden to demonstrate the absence of a genuine issue of material fact on Mr. Cadle's claim of retaliation as a predicate act; and (2) Mr. Cadle did not meet his reciprocal burden to set forth specific facts demonstrating a genuine issue for trial on the act of retaliation.

4. Interstate Racketeering

{¶65} Mr. Cadle accused Mr. Hicks of engaging in interstate racketeering—a corrupt activity under R.C. 2923.31(I)(1)—in violation of 18 U.S.C. 1952(a)(3):

> Whoever travels in interstate or foreign commerce or uses the mail or any facility in interstate or foreign commerce, with intent to * * * (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform * * * [the act] shall be fined under this title, imprisoned not more than 5 years, or both[.]

{¶66} Pursuant to 18 U.S.C. 1952(b), "unlawful activity" means

> (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics or controlled substances (as defined in section 102(6) of the Controlled

> Substances Act), or prostitution offenses in violation of the laws of the State in which they are committed or of the United States,
>
> (2) extortion, bribery, or arson in violation of the laws of the State in which committed or of the United States, or
>
> (3) any act which is indictable under subchapter II of chapter 53 of title 31, United States Code, or under section 1956 or 1957 of this title * * *.

{¶67} As defined, extortion is the only "unlawful activity" alleged by Mr. Cadle in the amended counterclaim that could form the basis of his interstate racketeering allegation: "Hicks used the United States mail (Px 1) to facilitate his scheme to extort money, property or other valuable benefits out of Mr. Cadle[.]" "Px 1" is an exhibit attached to the counterclaim, which is a copy of the notice of the annual stockholders meeting Mr. Cadle received in the mail from Health Grades.

{¶68} Mr. Hicks, in his converted motion for summary judgment, argued that Mr. Cadle cannot succeed on this claim because he cannot succeed on his extortion claim. In response, Mr. Cadle ignores the reference in his counterclaim to the 2007 Health Grades invitation sent via U.S. mail and, instead, again accuses Mr. Hicks of committing extortion by causing the 2011 email to be sent, which requested the cessation agreement.

{¶69} We have already held Mr. Cadle provided no evidence that the 2011 email sent by Mr. Hicks' counsel to Mr. Cadle's counsel was extortion. Likewise, Mr. Cadle has provided no evidence that the 2007 invitation sent by Health Grades to all stockholders was extortion.

{¶70} We conclude that (1) Mr. Hicks met his initial burden to demonstrate the absence of a genuine issue of material fact on Mr. Cadle's claim of interstate racketeering

as a predicate act; and (2) Mr. Cadle did not meet his reciprocal burden to set forth specific facts demonstrating a genuine issue for trial on the act of interstate racketeering.

{¶71} As all of the alleged predicate acts lack any evidentiary support, Mr. Cadle's PCA claim necessarily fails as a matter of law. The trial court did not err in granting summary judgment in favor of Mr. Hicks on Count One of the amended counterclaim.

B. Intentional Infliction of Emotional Distress

{¶72} In Count Two of the amended counterclaim, Mr. Cadle accused Mr. Hicks of intentionally inflicting emotional distress ("IIED"). "One who by extreme and outrageous conduct intentionally or recklessly causes serious emotional distress to another is subject to liability for such emotional distress[.]" *Yeager v. Local Union 20*, 6 Ohio St.3d 369 (1983), syllabus, *abrogated on other grounds*, 193 Ohio St.3d 464, 2007-Ohio-2451. "The liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." *Id.* at 375.

{¶73} In order to succeed on this claim, Mr. Cadle was required to show that (1) Mr. Hicks "either intended to cause emotional distress or knew or should have known that the actions taken would result in serious emotional distress" to Mr. Cadle; (2) Mr. Hicks' "conduct was so extreme and outrageous as to go 'beyond all possible bounds of decency' and was such that it could be considered as 'utterly intolerable in a civilized community'"; (3) Mr. Hicks' actions proximately caused Mr. Cadle's psychological injury; and (4) the mental anguish suffered by Mr. Cadle "was serious and of a nature that 'no reasonable man could be expected to endure it.'" *Krlich v. Clemente*, 11th Dist. Trumbull No. 2015-T-0089, 2017-Ohio-7945, ¶25 (citations omitted).

{¶74} Mr. Cadle alleged Mr. Hicks engaged in the following conduct:

1. False allegations of "stalking" Mr. Hicks' wife and minor daughter, which were distributed to The Cadle Company in June 2007 and redistributed to investment bankers in June 2010;

2. Wrongful detention of Mr. Cadle when he arrived at Health Grades for the stockholder meeting in June 2007;

3. Distributing a false report that Mr. Cadle filed for bankruptcy in September 2007, redistributing the report to The Cadle Company in July 2009, and republishing the report to investment bankers in June 2010;

4. Distributing a false expert report to The Cadle Company in July 2009 and republishing to investment bankers in June 2010, claiming Mr. Cadle poses a continuing threat to Mr. Hicks' immediate family and has antisocial tendencies consistent with those who have deliberately killed or injured others;

5. Filing suit in Trumbull County, which is Mr. Cadle's hometown, and obtaining ex parte injunctive relief against the Cadle Parties in May 2011, which prohibited them from refinancing their prior loan with Home Savings;

6. Threatening Mr. Cadle's daughter in order to extort valuable benefits from Mr. Cadle by sending the cessation request email in November 2011.

{¶75} Mr. Cadle alleged that Mr. Hicks willfully, intentionally, and maliciously inflicted severe emotional distress upon him by engaging in this wrongful course of conduct. Mr. Cadle stated that "[a]t all relevant times, Hicks acted with enmity, hatred and extreme ill will toward Mr. Cadle, and was willing to go to any means necessary to punish Mr. Cadle; to harm and damage Mr. Cadle's personal and business reputation; and to cause harm and damage to Mr. Cadle, including severe emotional distress." Mr. Cadle requested actual damages for severe emotional distress in an amount not less than $10 million, plus punitive damages.

{¶76} In his converted motion for summary judgment, Mr. Hicks asserted the IIED claim must fail because (1) it was barred by the statute of limitations; (2) it was

insufficiently pled; and (3) all of Mr. Hicks' allegedly improper conduct was absolutely privileged.

{¶77} The trial court concluded that no genuine issues of material fact exist for trial on the IIED claim. Specifically, the court held (1) reasonable minds could only find that Mr. Hicks acted within the bounds of normal decency under the totality of the circumstances and (2) there was no evidentiary support for the notion that Mr. Cadle's anguish was of a nature that no reasonable man could be expected to endure. Additionally, the trial court found that the IIED claim was time-barred.

{¶78} On appeal, Mr. Cadle first argues the trial court erred in ruling the claim was time-barred, because Mr. Hicks had withdrawn this argument.

{¶79} After this court remanded the initial appeal, the trial court set a briefing schedule, and the parties disagreed over the appropriate scope of discovery. Within a responsive submission, Mr. Hicks stated: "Regarding the affirmative defense of the statute of limitations that was never reached by [the trial court] in its [first] Summary Judgment Order, Mr. Hicks does not believe that the defense needs to be reached now. Accordingly, Mr. Hicks will withdraw, without prejudice, that alternative argument to his summary judgment motion."

{¶80} Although Mr. Cadle is correct that Mr. Hicks withdrew this argument, the trial court's finding that the claim was time-barred is not reversible error. It was an alternative holding, and Mr. Cadle's second argument, related to the trial court's substantive holding, is dispositive of the issue.

{¶81} Mr. Cadle argues the trial court went beyond Mr. Hicks' summary judgment arguments when it held, "after reviewing all the evidentiary materials and memoranda

before it at this time, * * * 'there [is not] any evidence that Mr. Cadle's anguish was of a nature that no reasonable man could be expected to endure.'" Mr. Cadle contends this was error because the only element Mr. Hicks challenged on summary judgment was that his conduct did not rise to the level of actionable conduct for an IIED claim.

{¶82} Contrary to Mr. Cadle's contention, however, Mr. Hicks also challenged the elements of "proximate causation" and Mr. Cadle's "psychological injury" or "level of anguish." The following is taken from Mr. Hicks' converted motion for summary judgment:

> Further, Defendants cannot merely state that the alleged threat against Mr. Cadle's daughter constituted intentional infliction of emotional distress. Again, this Court need not accept legal conclusions as factual allegations. *Heights Cmty. Congress*, 862 F.Supp at 206. There is no indication how or why the statements contained in the letter from Mr. Hicks' counsel to Defendants' counsel caused emotional distress, other than to say that Mr. Hicks' conduct 'proximately caused' emotional distress. Am. Countercls. ¶47. This is insufficient to put Mr. Hicks on notice of the causal mechanism of an intentional infliction of emotional distress claim, as it is simply a restatement of the 'proximate cause' element without any additional factual allegations or support. Thus, the newly articulated conduct cannot form the basis of the Amended Counterclaim for intentional infliction of emotional distress, and the claim must be dismissed.

The paragraph is limited to the 2011 cessation letter because, in the paragraphs immediately prior, Mr. Hicks' contention was that a claim for the conduct that allegedly occurred earlier was time-barred.

{¶83} The same argument clearly applies to the earlier alleged conduct, however, as Mr. Cadle's counterclaim only contains legal conclusions and a recitation of the elements of an IIED claim. In his responses to Mr. Hicks on summary judgment, Mr. Cadle never rebutted the assertion that he had not provided the trial court with any indication as to how or why he was caused emotional distress by any of Mr. Hicks' alleged conduct.

{¶84} The Supreme Court of Ohio has held that "serious emotional distress" goes beyond "trifling mental disturbance, mere upset or hurt feelings"; rather, it "describes emotional injury which is both severe and debilitating." *Paugh v. Hanks*, 6 Ohio St.3d 72, 78 (1983). "Thus, serious emotional distress may be found where a reasonable person, normally constituted, would be unable to cope adequately with the mental distress engendered by the circumstances of the case." *Id.* (citations omitted). "A non-exhaustive litany of some examples of serious emotional distress should include traumatically induced neurosis, psychosis, chronic depression, or phobia." *Id.* (citation omitted); *accord Yeager*, *supra*, at 374 and *Sibera v. Kordes*, 11th Dist. Trumbull No. 2009-T-0129, 2010-Ohio-6574, ¶37.

{¶85} "Summary judgment is appropriate when the plaintiff presents no testimony from experts or third parties as to the emotional distress suffered and where the plaintiff does not seek medical or psychological treatment for the alleged injuries." *Crable v. Nestle USA, Inc.*, 8th Dist. Cuyahoga No. 86746, 2006-Ohio-2887, ¶58 (citations omitted); *accord Rhoades v. Chase Bank*, 10th Dist. Franklin No. 10AP-469, 2010-Ohio-6537, ¶21.

{¶86} Mr. Cadle did not provide any evidence that he was mentally distressed, let alone that he suffered the type of mental anguish necessary to establish a claim for IIED. Mr. Cadle offered no independent evidence to substantiate an IIED claim, such as evidence from an expert or evidence that he sought medical or psychological treatment for severe emotional distress. In fact, the only evidence Mr. Cadle provided that even mentions emotional distress was his own affidavit, in which he never once avers he actually suffered severe emotional distress. Rather, he repeatedly states Mr. Hicks engaged in certain conduct in order to cause Mr. Cadle emotional distress:

> 18. * * * I believe that Hicks made these false allegations against me with malice, hatred and ill will, and were made *to cause* me severe emotional distress.
>
> 21. * * * I believe Hicks had me set-up *for the purpose of causing* me embarrassment, humiliation, and severe emotional distress.
>
> 28. * * * I believe that Hicks lured me to Health Grades' office, had me served with the ex parte TCPO at Health Grades' office, and then had the police physically restrain and remove me from Health Grades' office, against my will, all *for the purpose of causing* me embarrassment and extreme emotional distress.
>
> 32. * * * I believe that Hicks' false and defamatory allegations against me were made * * * *to cause* me severe emotional distress.
>
> 35. * * * I believe that Hicks' wrongful threats against me and my daughter * * * were designed *to cause* me severe emotional distress * * *. [Emphasis added.]

{¶87} Construing the evidence in the light most favorable to Mr. Cadle, we conclude that he failed to present any evidence of psychological injury or mental anguish. Thus, there was no genuine issue of material fact as to Mr. Cadles' claim for IIED, and summary judgment in Mr. Hicks' favor was appropriate on Count Two of the amended counterclaim.

C. Tortious Interference with Business Relations

{¶88} In Count Three of the amended counterclaim, the Cadle parties jointly accused Mr. Hicks of tortiously interfering with their business relations with Home Savings. In order to succeed on their claim, the Cadle parties were required to prove that Mr. Hicks, without privilege to do so, induced or purposely caused Home Savings not to enter into or continue a business relation with them. *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. & Constr. Trades Council*, 73 Ohio St.3d 1, 14 (1995).

{¶89} Mr. Hicks filed his complaint against the Cadle parties on May 31, 2011, in the Trumbull County Court of Common Pleas. Mr. Hicks stated he was awarded a judgment against Mr. Cadle in Colorado, which he had registered in the United States District Court for the Northern District of Ohio on January 3, 2011. Writs of execution had been served on the Cadle parties for stocks and other assets owned by Mr. Cadle, but Mr. Hicks had not yet collected the judgment from Mr. Cadle. Mr. Hicks claimed that Home Savings had been awarded a cognovit judgment against the Cadle parties on May 5, 2011, and that it had filed an action to foreclose and moved for a receiver. According to the complaint, Home Savings and the Cadle parties were negotiating a resolution to the foreclosure and receivership action. Mr. Hicks requested declaratory and injunctive relief from the Trumbull County Court of Common Pleas because it was unclear whether Mr. Cadle would be using his personal assets to satisfy that judgment.

{¶90} The trial court granted Mr. Hicks a temporary restraining order ("TRO") on May 31, 2011. The TRO enjoined and prohibited the Cadle parties, "and all persons and entities acting in concert with them or under their control, * * * from transferring any assets or property belonging to [them] in a manner that fails to provide for the satisfaction of the judgment that Mr. Hicks obtained against Mr. Cadle." The trial court stated that Mr. Hicks would suffer immediate and irreparable harm in the event the TRO was not granted, "because the transfer of assets contemplated by Defendants will leave Mr. Cadle unable to pay the judgment entered in favor of Mr. Hicks and will impair the value of The Cadle Company and United Joint Venture Limited Partnership."

{¶91} Upon expiration of the TRO, on June 28, 2011, the trial court held a hearing on Mr. Hicks' motion for a preliminary injunction. Mr. Hicks sought to abort any refinancing

efforts of the Cadle parties and Home Savings that may involve a Huntington Bank IRA, because the IRA had allegedly lost its exemption status and would be subject to the writ of execution Mr. Hicks had served on Huntington in his collection efforts. The trial court held that the federal court was the proper venue to determine the exempt status of the Huntington IRA.

{¶92} The trial court refused to grant Mr. Hicks a preliminary injunction because he failed to register his foreign judgment in the trial court and because "Hicks is attempting to make a collateral attack in this Court as a mechanism for his collection efforts." The trial court was "concerned with Hicks' duplicitous approach toward 'putting out the fire.' Simultaneous with this action, Hicks filed an identical motion in the federal court seeking identical relief. This is akin to forum shopping and the Court is not amenable to aid in Hicks' efforts to see which Court jumps first only to return for arguments on res judicata."

{¶93} The trial court further held that a preliminary injunction would irreparably harm not only the Cadle parties, but also Home Savings, because the Cadle parties' secured indebtedness to Home Savings predated Mr. Hicks' judgment.

{¶94} In their amended counterclaim, the Cadle parties claimed that, as of May 31, 2011, they had an existing credit relationship with Home Savings and that they had a reasonable expectation they would be able to obtain fair and reasonable refinancing of their existing debt obligations to Home Savings. The Cadle parties alleged that by obtaining the TRO, Mr. Hicks willfully, intentionally, and maliciously interfered with this relationship, without just cause or excuse, which directly and proximately caused them to suffer consequential damages in an amount not less than $10 million. The Cadle parties also sought punitive damages.

{¶95} In his converted motion for summary judgment, Mr. Hicks asserted that his efforts to use the judicial process to satisfy a valid judgment and provide truthful information to protect property in which he had a valid legal interest are absolutely privileged as a matter of law. He further asserted the Cadle parties had not alleged any manner in which they incurred damages or how any damages could be attributed to Mr. Hicks.

{¶96} The Cadle parties responded that, after the filing of their amended counterclaim, they "discovered additional wrongful conduct by Hicks which tortiously interfered with the Cadle Parties' business relationship with not only Home Savings, but with Huntington National Bank ('HNB') as well." They alleged the following:

> Despite being previously warned by this Court [in the June 28, 2011 entry] that Hicks' efforts to interfere with the Cadle Parties' refinancing efforts with Home Savings would cause irreparable harm, at 9:17 a.m. on June 29, 2011 Hicks sent an e-mail to HNB asserting Hicks' 'demand that Huntington refrain from permitting any transfers from Mr. Cadle's IRA account.' As Hicks fully intended, at 4:24 p.m. on June 29, 2011 HNB informed Mr. Cadle that HNB would no longer authorize the release of funds from Mr. Cadle's IRA. In other words, the actions which this Court warned Hicks would cause irreparable harm and damage to the Cadle Parties, Hicks decided to do on his own through inappropriate threats against HNB.

The Cadle parties attached a copy of the e-mail Mr. Hicks' counsel sent to Huntington and a copy of the e-mail Huntington's counsel then sent to Mr. Cadle.

{¶97} Mr. Hicks replied that the Cadle parties "improperly attempt to amend their Counterclaims through their summary judgment brief." Nevertheless, he repeated that his conduct is not actionable because any alleged interference was done solely to protect his own rights. Further, Mr. Hicks stated, his counsel sent the e-mail to Home Savings

and Huntington on June 29, 2011, while proceedings were still ongoing in the federal court regarding the writs of execution and the validity of Mr. Cadle's Huntington IRA.

{¶98} The e-mail from Mr. Hicks' counsel to Huntington provides, in toto:

> Please call me at your earliest convenience to discuss the attached order [denying a preliminary injunction]. The Trumbull County Court of Common Pleas issued an order deferring to the jurisdiction of the federal court with regard to the writ of execution issued by the federal court to Huntington. Because no court has yet addressed the merits underlying the motion that we filed in District Court last week, we continue to demand that Huntington refrain from permitting any transfers from Mr. Cadle's IRA account. By copy of this e-mail, we are making the same demand of The Home Savings and Loan Company of Youngstown, Ohio. We will file a request for a status conference today * * * and will request that Huntington participate along with the parties. Please let us know by 3:00 today whether you will join in the motion for such a conference.

{¶99} The e-mail from Huntington's counsel to Mr. Cadle provides, in toto:

> I am Senior Counsel to [Huntington] and write in relation to your June 28, 2011 request for distribution from the referenced Account No. [ ]. Take notice that Huntington will not honor your request for distribution on account of this enclosed Writ of Execution which was served on Huntington on February 14, 2011. Huntington will not distribute any funds or property from either Account No. [ ] or Account No. [ ] until such time as the issues relating to the Writ of Execution have been resolved by a court of competent jurisdiction. If you have any questions, please have your counsel contact me.

{¶100} Again, a crucial element of tortious interference with a business relationship is that the alleged conduct was not privileged or justified. "'One who, by asserting in good faith a legally protected interest of his own * * * intentionally causes a third person not to perform an existing contract or enter into a prospective contractual relation with another does not interfere improperly with the other's relation if the actor believes that his interest may otherwise be impaired or destroyed by the performance of the contract or

transaction.'" *Inwood Village, Ltd. v. Christ Hosp.*, 1st Dist. Hamilton No. C-110730, 2012-Ohio-3434, ¶18, quoting Restatement of the Law 2d, Torts, Section 773 (1979).

{¶101} It is clear from this correspondence that Huntington refused to distribute funds from the IRA account because of the uncertainty of the writ of execution served in the federal court proceedings, not because Mr. Hicks had later obtained the TRO from Trumbull County or because of any other action undertaken by Mr. Hicks. The writ of execution was served in order to collect on a valid judgment Mr. Hicks was awarded against Mr. Cadle. Mr. Hicks dismissed the Trumbull County lawsuit once he received payment from Mr. Cadle, and the Cadle parties have not demonstrated how their business relationship with Home Savings was impaired or destroyed.

{¶102} We conclude that Mr. Hicks satisfied his initial summary judgment burden by providing evidence demonstrating he was attempting to collect a valid judgment from Mr. Cadle when he obtained the TRO and when his counsel e-mailed the banks; in other words, he demonstrated that his actions were privileged or justified. The Cadle parties, on the other hand, did not meet their reciprocal burden to set forth specific facts that demonstrate a genuine issue for trial on their claim of tortious interference with business relations. The trial court did not err in granting summary judgment in favor of Mr. Hicks on Count Three of the amended counterclaim.

{¶103} The Cadle parties' first assignment of error is without merit.

III. Motion for Sanctions

{¶104} Following summary judgment, Mr. Hicks filed a "Motion to Recover Attorneys' Fees, Costs and Expenses Pursuant to R.C. 2323.51 and Civ.R. 11." The motion requested recovery from the Cadle parties as well as their attorneys of record for

the fees, costs, and expenses Mr. Hicks incurred in connection with defending against the amended counterclaim. An evidentiary hearing was held on October 24, 2018.

{¶105} On March 21, 2019, the trial court granted the motion only against the Cadle parties, not against their counsel, because it found "there is no doubt that the driving force behind these actions was Mr. Daniel C. Cadle." The trial court further stated that, "although [counsel's] lack of proper due diligence leads this Court quite close to assessing sanctions against each of them in their own personal capacity, the Court finds the proper onus is on Cadle."

{¶106} The trial court held, "pursuant to R.C. 2323.51 and Civ.R. 11, that sanctions are appropriate and necessary. The Court further finds an appropriate sanction would be an assessment of reasonable attorney fees and costs associated with the counterclaim upon the Cadle Defendants, including Mr. Daniel C. Cadle in his individual capacity."

{¶107} Although the trial court's holding refers to Civ.R. 11, "[b]y its own terms, Civ.R. 11 authorizes an award only against attorneys or pro se parties, not represented parties." *Krlich v. Shelton*, 11th Dist. Trumbull No. 2018-T-0104, 2019-Ohio-3441, ¶31 (citations omitted); Civ.R. 11 ("[f]or a willful violation of this rule, *an attorney or pro se party* * * * may be subjected to appropriate action") (emphasis added). The trial court very clearly rendered sanctions solely against the Cadle parties and, therefore, solely pursuant to R.C. 2323.51.

{¶108} R.C. 2323.51(B)(1) provides, in part, that "* * * any party adversely affected by frivolous conduct may file a motion for an award of court costs, reasonable attorney's fees, and other reasonable expenses incurred in connection with the civil action or appeal. The court may assess and make an award to any party to the civil action or appeal who

was adversely affected by frivolous conduct * * *." "Conduct" includes "[t]he filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, * * * or the taking of any other action in connection with a civil action[.]" R.C. 2323.51(A)(1)(a). "Frivolous conduct," as defined in R.C. 2323.51(A)(2)(a), is conduct that satisfies any of the following:

> (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.
>
> (ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.
>
> (iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.
>
> (iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

{¶109} "'Since "willfulness" is not a prerequisite for relief' under R.C. 2323.51, an 'analysis of a claim under this statute boils down to a determination of (1) whether an action taken by the party to be sanctioned constitutes "frivolous conduct," and (2) what amount, if any, of reasonable attorney fees necessitated by the frivolous conduct is to be awarded to the aggrieved party.'" *Lozada v. Lozada*, 11th Dist. Geauga No. 2012-G-3100, 2014-Ohio-5700, ¶12, quoting *Ceol v. Zion Indus., Inc.*, 81 Ohio App.3d 286, 291 (9th Dist.1992).

{¶110} In their second assignment of error, the Cadle parties challenge both determinations.

A. Frivolous Conduct

{¶111} The Cadle parties first contend the trial court erred in determining they engaged in frivolous conduct, because they had a good faith basis for the assertions in their amended counterclaim.

{¶112} Contrary to their assertion, there is no record evidence that the Cadle parties had a good faith basis for the assertions in their counterclaim against Mr. Hicks. Nor is that the standard for determining whether sanctions should be imposed under R.C. 2323.51.

{¶113} "'R.C. 2323.51 employs an objective standard in determining whether sanctions may be imposed for frivolous conduct.'" *State ex rel. Striker v. Cline*, 130 Ohio St.3d 214, 2011-Ohio-5350, ¶21 (citation omitted). "Thus, a finding of frivolous conduct under R.C. 2323.51 is decided without inquiry as to what the individual knew or believed, and instead asks whether a reasonable lawyer would have brought the action in light of existing law." *Harris v. Rossi*, 11th Dist. Trumbull No. 2016-T-0014, 2016-Ohio-7163, ¶19, citing *Omerza v. Bryant & Stratton*, 11th Dist. Lake No. 2006-L-147, 2007-Ohio-5216, ¶15.

> In determining whether conduct is frivolous, courts must be cautious in applying R.C. 2323.51 so that legitimate claims are not chilled. A party's conduct is not frivolous simply because a claim is not well-grounded in fact or impervious to dispute. Further, the statute was not designed to punish coincidental misjudgment or mere tactical error. To the contrary, the purpose of the statute is to discourage egregious, overzealous, unjustifiable, and frivolous action.

Conneaut v. Buck, 11th Dist. Ashtabula No. 2014-A-0053, 2015-Ohio-2593, ¶35 (internal citations omitted). "A party only needs minimal evidentiary support for its allegations or factual contentions to avoid a frivolous conduct finding." *Krlich v. Shelton*, *supra*, at ¶42, citing *Carasalina LLC v. Bennett*, 10th Dist. Franklin No. 14AP-74, 2014-Ohio-5665, ¶36.

{¶114} "This court's standard of review is dependent upon which of the four R.C. 2323.51(A)(2)(a) subsections the trial court based its decision." *Harris*, *supra*, at ¶20. "'The question of what constitutes frivolous conduct may be either a factual determination, e.g., whether a party engages in conduct to harass or maliciously injure another party, or a legal determination, e.g., whether a claim is warranted under existing law.'" *Lozada, supra*, at ¶13, quoting *Curtis v. Hard Knox Energy, Inc.*, 11th Dist. Lake No. 2005-L-023, 2005-Ohio-6421, ¶15. Legal determinations are reviewed under a de novo standard of review. Factual determinations must be supported by competent, credible evidence and will not be disturbed save an abuse of discretion. *Id.*; *Harris*, *supra*, at ¶20.

{¶115} While the trial court's decision touches on each of the four categories of frivolous conduct, it is most prominently based on the factual determination, under R.C. 2323.51(A)(2)(a)(i), that the Cadle parties' pursuit of the amended counterclaim was frivolous because it "obviously serve[d] merely to harass or maliciously injure" Mr. Hicks:

> Each and every action, including the filing of the counterclaims in this case, were taken with one purpose: to negatively impact Hicks. The counterclaims, rendered meritless in this Court's April 2018 Judgment Entry, were so baseless in fact and law that there is no legitimate purpose for the filing. * * * The court finds each of these causes of action in the counterclaim and amended counterclaim were filed to intimidate and harass Hicks in accordance with a pattern of similar conduct by Cadle across multiple states and venues, including Federal Courts and arbitrations.

{¶116} The trial court reached this determination, in part, by relying on a timeline of events that preceded this action in order to demonstrate Mr. Cadle's "complete disregard" for his "complete lack of a viable claim" against Mr. Hicks. The following is taken verbatim from the trial court's entry:

July 2003: Letter from legal counsel for Bank of America advising Cadle as follows: 'By the time that the loan was sold to The Cadle Company, BOA had concluded that Mr. Hicks was not obligated under the promissory note and had elected not to pursue any claims against him. This information was conveyed to The Cadle Company in the loan file that was provided to The Cadle Company when the note was sold.'

Sept. 2004: Letter from Cadle to Tennessee and Colorado attorneys general re allegations of bank fraud by Hicks.

Nov. 2004: Letter from Cadle to Tennessee Dept. of Financial Institutions re allegations of bank fraud by Hicks.

April 2005: Hinga [Phase I] Arbitration Award in favor of Hicks and against Cadle in the amount of $400,000. This arbitration found Cadle abused the process and the court system by filing an action in Federal Court in Tennessee against Hicks despite prior knowledge that Hicks was not liable on the BOA/Cadle Note. [Arbitrator] Hinga opined Cadles' conduct '* * * to be outrageous and beyond all norms of debt collection activity.'

June 2005: Cadle, in response and in complete disregard to the Hinga Arbitration Award, pens a letter to Arbitrator Hinga as well as counsel for Hicks. Cadle boldly asserts the only reasons for the Hinga Arbitration award is either '* * * the arbitrator is crooked; or the arbitrator is incompetent.' Interestingly, Cadle also asserts he is entitled to attorney fees for defending the 'malicious suit' (which they lost) and threatens legal action if the attorney fees demand is not met.

April 2005 –
July 2006: Cadle engaged in a campaign of letters to various government entities regarding the same allegations against Hicks.

May 2007: Dubofsky [Phase II] Arbitration Award in favor of Hicks and against Cadle. [Arbitrator] Dubofsky found Cadle had '* * * engaged in a relentless campaign to defame, intimidate and

harass Hicks by raising alleged bank fraud, perjury and other serious allegations against Hicks before numerous other governmental and private bodies.'

Dubofsky also found the relentless letter campaign demonstrated, '* * * a willful and malicious course of conduct that is not justified by a citizen's obligation to report, in good faith, suspected criminal activity. Cadle's filings all confirm a premeditated and willful intent to harm Hicks.'

Dubofsky also noted Cadle's disdain for the prior arbitrator. 'Cadle acknowledged that he stated that [Arbitrator] Hinga should "rot in hell" and then indicated he was surprised that Hinga's death met his wish so quickly.'

Cadle's contempt for Hicks and Hinga spread to counsel for Hicks as well. Dubofsky characterized such behavior as 'extraordinary.' He further described the actions of Cadle toward Hicks' legal counsel as directed with '* * * interactive hostility, anger and disdain' as 'disturbing.'

According to the Dubofsky Arbitration, 'At one point in this process, I asked Cadle why he bought stock in Health Grades. Cadle indicated that his purchase was not an investment but rather provided an opportunity to spy on Hicks and to keep track of his business situation. Cadle has retaliated against Hicks by using his stockholder position to harass and intimidate him.' (fn. 1: This Court notes the myopic view of Cadle. Cadle intentionally purchased stock in Hicks' company to 'spy' on him. Hicks was awarded a CPO against Cadle. Yet Cadle is shocked when he is served with the order at the shareholder meeting for the company.)

Arbitrator Dubofsky found, '* * * there was no bank fraud' on behalf of Hicks. He further found, '* * * there was no scheme to defraud.' In addition, Arbitrator Dubofsky found '* * * there has been no perjury.'

Perhaps the most relevant finding of the Dubofsky Arbitration was this: 'It is apparent from the previously referenced facts and circumstances that neither bank fraud nor perjury occurred and that respondents never had a reasonable objective or subjective belief that it did.'

Dubofsky Arbitration ultimately awarded $750,000 in damages in favor of Hicks and against Cadle plus an

additional $200,000 against Cadle's agent, Shaulis. In addition, punitive damages were awarded against Cadle in the amount of $950,000 plus $10,000 against Cadle's agent, Shaulis.

June 2007: Cadle pens a letter to the Attorney General of Ohio asserting the identical bank fraud allegations which were rejected outright by the Dubofsky Arbitration.

Cadle pens a similar letter to the Federal Reserve Bank of Cleveland questioning an opinion on the bank fraud.

Cadle pens a similar letter to Atty. James Petro reiterating the bank fraud allegations rejected by the Dubofsky Arbitration.

Cadle pens a similar letter to the Attorney General of California seeking an opinion on the bank fraud allegations rejected by the Dubofsky Arbitration.

Cadle pens a similar letter to the Attorney General of Tennessee seeking an opinion on the bank fraud allegations rejected by the Dubofsky Arbitration.

Cadle writes to the Office of the Comptroller of the Currency with the caption, 'Apparent Bank Fraud' regarding the same allegations discussed in the Dubofsky Arbitration.

After the series of Cadle letters to the attorneys general listed above, Hicks files a motion for a civil protection order against Cadle.

Aug. 2007: Order issued by the United States District Court for the District of Colorado by Senior Judge Zita L. Weinshienk following a hearing on a preliminary injunction and ordering '* * * [Cadle] to attach a copy of (1) this Order, (2) Judge Dubofsky's Arbitration Award, and (3) any Order which may be issued in the future by this Court confirming Judge Dubofsky's Arbitration Award to any * * *' communications sent to third parties alleging criminal acts or bank fraud by Hicks.

Judge Weinshienk did, in fact, subsequently confirm the Hinga Arbitration Award and the Dubofsky Arbitration. The Tenth [Circuit] Court of Appeals essentially affirmed the substantive findings of this decision, reversing and remanding for a pre-judgment interest issue only.

Feb. 2010: Leopold [Phase III] Arbitration Award issued awarding compensatory damages in favor of Hicks and against Cadle in the amount of $1,250,000 and punitive damages in the amount of $1.9 million.

{¶117} The record contains evidence which supports that each and every one of these events did occur: the letters, arbitration decisions, and judicial opinions were submitted to the trial court on summary judgment. Of course, the Cadle parties cannot be sanctioned by the trial court for engaging in frivolous conduct prior to the 2011 action at hand. Nevertheless, this historical timeline of events does provide competent, credible evidence to support the trial court's determination that filing the counterclaim was frivolous conduct on the part of the Cadle parties.

{¶118} The trial court's entry granting summary judgment also lends support for a frivolous conduct finding. The trial court determined there was no evidence to support the allegations in the counterclaim, and we have affirmed that determination above.

{¶119} Based on our deferential standard of review, we cannot say the trial court abused its discretion or lost its way in finding that the Cadle parties engaged in frivolous conduct sufficient to authorize an award of attorney's fees under R.C. 2323.51.

B. Reasonable Attorney Fees Incurred

{¶120} The Cadle parties further contend the trial court's award must be reversed because Mr. Hicks failed in his burden to prove the amount of fair, reasonable, and necessary legal fees and expenses he incurred while defending against the amended counterclaim.

{¶121} "[W]here a trial court has determined a party has engaged in frivolous conduct, the decision to assess a penalty lies within the sound discretion of the trial court." *Lozada*, *supra*, at ¶14 (citation omitted). An appellate court will interfere with the trial

court's decision, however, where the amount is so high or so low that it shocks the conscience. *Id.* at ¶56, citing *Bittner v. Tri-County Toyota, Inc.*, 58 Ohio St.3d 143, 146 (1991).

{¶122} The trial court's award of attorney's fees must be *reasonable*. R.C. 2323.51(B)(1). "A trial court is required to base its reasonableness analysis upon the actual value of the necessary services performed, and the record must disclose some evidence to support the court's decision." *Lozada*, *supra*, at ¶53 (citation omitted). The burden of proving that the number of hours billed was reasonable and that those hours were fairly and properly used rests on the attorney. *Id.*, citing *In re Guardianship of Spagnola*, 195 Ohio App.3d 719, 2011-Ohio-5602, ¶14 (11th Dist.).

{¶123} The trial court should first multiply a reasonable hourly rate by the number of hours reasonably expended on the civil action. *Id.* at ¶54, citing *Bittner*, *supra*, at 145. "A reasonable hourly rate is the prevailing market rate in the relevant community, given the complexity of the issues and the experience of the attorney." *State ex rel. Harris v. Rubino*, 156 Ohio St.3d 296, 2018-Ohio-5109, ¶4 (citations omitted).

{¶124} The trial court may then modify that amount by applying the reasonableness factors listed in Ohio Rules of Professional Conduct 1.5. *Lozada*, *supra*, at ¶54, citing *Bittner*, *supra*, at 145; *accord Harris*, *supra*, at ¶3. Those factors are as follows:

> (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability

> of the lawyer or lawyers performing the services; (8) whether the fee is fixed or contingent.

Prof.Cond.R. 1.5(a).

{¶125} Mr. Hicks incurred a total of $1,236,827.47 in legal fees and costs in defense of the counterclaim, in his initial efforts to compel arbitration, and in pursuing a motion to declare Mr. Cadle a vexatious litigator.

{¶126} The vexatious litigator request was not well taken by the trial court, which held that a separate action must be filed pursuant to R.C. 2323.52. Accordingly, the trial court did not award Mr. Hicks any fees or costs associated with that request.

{¶127} Over objection from the Cadle parties, the trial court held that Mr. Hicks was entitled to recover legal fees and costs for attempting to compel arbitration. The court found "it was reasonably foreseeable that Hicks would attempt to enforce the arbitration provision in response to the Cadle counterclaim."

{¶128} The trial court awarded Mr. Hicks the total sum of $1,130,811.50 in legal fees and $12,278.90 in costs. These amounts represented fees and costs incurred by three law firms: $72,783.00 in legal fees, plus $920.95 in costs, to Harrington, Hoppe & Mitchell; $95,314.00 in legal fees to Calfee, Halter & Griswold; $962,714.50 in legal fees, plus $11,357.95 in costs, to Lewis Roca Rothgerber Christie.

{¶129} The Cadle parties assert four specific arguments regarding the amount of fees awarded.

{¶130} First, they argue the trial court should have awarded legal fees from September 26, 2012, the date the amended counterclaim was filed, not from June 9, 2011, when the original counterclaim was filed. This assertion is based on the first paragraph of Mr. Hicks' motion, which states: "For the reasons stated herein, Mr. Hicks

should recover court costs, attorney's fees and expenses incurred in connection with defendant [the Cadle parties'] *amended counterclaims*." Mr. Hicks concluded the motion, however, by requesting an award of "court costs, attorney's fees and expenses incurred in connection with defending [the Cadle parties'] *claims* before this Court and on appeal[.]"

{¶131} The amended counterclaim included the same three claims against Mr. Hicks as the original counterclaim. The Cadle parties filed the amended pleading only to add the facts related to Mr. Hicks filing the 2011 lawsuit, obtaining the TRO, and sending the letter to Mr. Cadle requesting a cessation agreement. Given that the Cadle parties were found to have engaged in frivolous conduct based on the allegations included in all three counts of the original/amended counterclaim, there is no basis in logic or fact to assume or hold that Mr. Hicks intended only to request reimbursement from the time the amended counterclaim was filed. This argument is not well taken.

{¶132} Next, the Cadle parties argue that Mr. Hicks failed in his duty to mitigate attorney's fees and expenses by refusing to engage in good faith settlement negotiations. They cite to no authority indicating a party has a duty to negotiate a settlement of frivolous claims in order to reduce the frivolous parties' sanction of attorney's fees. As stated in Mr. Hicks appellate brief, we agree that "a litigant should not have to attempt to settle frivolous or unwarranted claims in order to recover fees incurred in defending against such claims. The absurdity of this proposition is further highlighted in this case where many of the allegations in support of the Amended Counterclaims came from Mr. Hicks' efforts to settle such claims." Because no such legal duty exists under R.C. 2323.51, this argument fails.

{¶133} The Cadle parties next argue that the staffing at Lewis Roca Rothgerber Christie was excessive and unreasonable for the work performed in defense of the amended counterclaim. According to their brief in opposition to Mr. Hicks' motion for sanctions, the law firm had 8 attorneys and 2 paralegals work on the case in 2011; 7 attorneys and 2 paralegals in 2012; 10 attorneys and 2 paralegals in 2013; 5 attorneys and 4 paralegals in 2014; 4 attorneys and 1 paralegal in 2015; 5 attorneys in 2016; and 9 attorneys and 1 paralegal in 2017.

{¶134} The trial court reviewed the law firm's invoices and found "the hourly rates charged by the Lewis Roca firm to be customary and reasonable based on geographical location, experience and level of skill required for the task." The trial court further found that "the Lewis Roca firm designated tasks appropriately among counsel at the firm. For example, it is apparent from the invoices that if a lower-level associate could perform research, that task was assigned to a lower-level associate and billed accordingly as opposed to a partner at a significantly higher rate."

{¶135} These are factual findings made by the trial court, and they are supported by competent, credible evidence in the record. Thus, we must defer to the trial court absent an abuse of discretion. Mr. Hicks provided over 500 pages of detailed invoices from the Lewis Roca law firm, which include the hours spent and itemized notations of the tasks each attorney or paralegal performed during those hours. This information allowed the trial court to make an informed decision as to the reasonableness of the number of hours and the hourly rates billed to Mr. Hicks, regardless of the number of staff assigned to the case in any given year. We cannot conclude that the trial court's decision was unreasonable, arbitrary, or unconscionable.

{¶136} Finally, The Cadle Company and United Joint Venture contend that the trial court erred in assessing the total amount of fees and costs against them, jointly and severally with Mr. Cadle, because they only brought one of the three claims against Mr. Hicks.

{¶137} This argument is not well taken. The trial court was permitted to award Mr. Hicks all attorney's fees reasonably incurred in connection with the civil action in which the frivolous conduct occurred, regardless of whether those fees were specifically necessitated by Mr. Cadle, The Cadle Company, or United Joint Venture. "While the moving party is required to prove the reasonableness of the requested attorney fees, he is not required to prove that the amount of attorney fees requested is directly related to or necessitated by the frivolous conduct. * * * The statute only prohibits the trial court from awarding an amount that exceeds the amount of attorney fees 'reasonably incurred by a party.'" *Krohn v. Krohn*, 6th Dist. Lucas No. L-16-1068, 2017-Ohio-408, ¶35. *See also Bowling v. Stafford & Stafford Co., LPA*, 1st Dist. Hamilton No. C-090565, 2010-Ohio-2769, ¶14 ("The statute was amended in 2005 to require proof only that the fees had been 'incurred in connection with the civil action' in which the frivolous conduct occurred. Under the amended statute, the requirement that the expenditures be specifically 'necessitated by the frivolous conduct' applies only to court costs and expenses, not to attorney fees."); *Mid-Ohio Mechanical v. Eisenmann Corp.*, 5th Dist. Guernsey Nos. 07 CA 000035 & 08 CA 00012, 2009-Ohio-5804, ¶157 ("The amendment to [R.C. 2323.51] clearly removed the requirement that fees be necessitated by the frivolous conduct, and replaced it with language allowing a party to recover attorney's fees 'reasonably incurred' by a party in a civil action.").

{¶138} The Cadle parties' arguments under their second assignment of error are without merit.

{¶139} The judgments of the Trumbull County Court of Common Pleas are affirmed.

MATT LYNCH, J.,

MARY JANE TRAPP, J.,

concur.