[Cite as *Mitchell v. Holzer Med. Ctr.*, 2017-Ohio-8244.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
GALLIA COUNTY

RUBIN A. MITCHELL,	:	
Plaintiff-Appellant,	:	Case No. 16CA20
vs.	:	
HOLZER MEDICAL CENTER, et al.,	:	DECISION AND JUDGMENT ENTRY
Defendants-Appellees.	:	

APPEARANCES:

Rubin A. Mitchell, Orient, Ohio, pro se.

Zachary J. Lyon, Columbus, Ohio, for appellees Kyle E. McCausland, M.D., Katha Wilcoxon, R.N., and Holzer Medical Center.

Michael DeWine, Ohio Attorney General, and Morgan A. Linn, Ohio Assistant Attorney General, Columbus, Ohio, for appellees Ohio State Highway Patrol, Sergeant Nicholas Johnson, Trooper James Trelka, Trooper Keith Fellure, Trooper Mark McFann, and Lieutenant Karla Taulbee.

CIVIL CASE FROM COMMON PLEAS COURT
DATE JOURNALIZED: 9-27-17
ABELE, J.

{¶ 1} This is an appeal from a Gallia County Common Pleas Court judgment that granted judgment on the pleadings in favor of Holzer Medical Center, Kyle McCausland, M.D., Katha Wilcoxon, R.N. (the Holzer defendants), Ohio State Highway Patrol Sergeant Nicolas S. Johnson, Trooper James M. Trelka, Trooper Keith Fellure, Lieutenant Karla Taulbee, and Trooper Mark McFann (the OSHP defendants), defendants below and appellees herein. Rubin A. Mitchell, plaintiff below and appellant herein, raises the following assignments of error for review:

FIRST ASSIGNMENT OF ERROR:

"THE TRIAL COURT ABUSED ITS DISCRETION AND VIOLATED THE PLAINTIFF['S] DUE PROCESS RIGHTS BY NOT RULING ON SUBMITTED MOTIONS IN A TIMELY MANNER."

SECOND ASSIGNMENT OF ERROR:

"THE TRIAL COURT ERRED WHEN IT DISMISSED THE COMPLAINT FOR VIOLATING THE STATUE [SIC] OF LIMITATIONS CLAUSE."

THIRD ASSIGNMENT OF ERROR:

"THE TRIAL COURT VIOLATED THE APPELLANT'S DUE PROCESS RIGHTS IN NOT APPOINTING HIM COUNSEL IN THE PRESENT CASE."

{¶ 2} On June 21, 2016, appellant filed a pro se complaint against appellees that asserted that, as a result of a May 31, 2014 traffic stop, he was subjected to an unconstitutional cavity search–both at the OSHP post and at Holzer Medical Center. Appellant alleged, in essence, that the series of events that surrounded the May 31, 2014 traffic stop and cavity search violated his civil rights and constituted assault, battery, and negligence. Appellant additionally requested the trial court to appoint counsel to represent him.

{¶ 3} After appellees answered, appellant filed an extension of time to respond to appellees' answer and an extension of time to file a motion for discovery, a motion for leave to amend the complaint, a motion for leave for joinder, and a renewed motion to appoint counsel. Appellant also requested additional time to serve interrogatories.

{¶ 4} Both appellees subsequently filed Civ.R. 12(C) motions for judgment on the pleadings. The OSHP defendants alleged that appellant's complaint is barred by the two-year statute of limitations applicable to claims alleging civil rights violations. The Holzer defendants

asserted that appellant's complaint is barred by the one-year statutes of limitations applicable to medical claims and to assault and battery claims.

{¶ 5} Appellant did not respond to either of the motions for judgment on the pleadings, but instead filed (1) a "request for joinder" that asked the court to "join all parties that [were] named in the complaint," (2) a motion for extension of time to file affidavits of merit, (3) another motion to appoint counsel, and (4) a request for an extension of time "to file all answers, reply briefs, [and] requests for discoveries from defendants."

{¶ 6} On October 6, 2016, the trial court overruled all of appellant's outstanding motions and granted appellees' motions for judgment on the pleadings. This appeal followed.[1]

I

{¶ 7} Before we consider appellant's assignments of error, we observe that appellant is acting pro se in this appeal. Because we ordinarily prefer to review a case on its merits rather than dismiss an action due to procedural technicalities, we generally afford considerable leniency to pro se litigants. *E.g.*, *Viars v. Ironton*, 4th Dist. Lawrence No. 16CA8, 2016–Ohio–4912, 2016 WL 3670171, ¶25; *Miller v. Miller*, 4th Dist. Athens No. 14CA6, 2014–Ohio–5127, 2014

[1] We note that on October 11, 2016, appellant filed a "responsive pleading" to the Holzer defendants' answer. Appellant asserted, in part, that the statute of limitations did not bar his complaint. Appellant alleged that he did not discover the injury until the trial court held the motion to suppress hearing in his criminal trial. Appellant claimed that at the motion to suppress hearing, he learned that Holzer Medical Center had procedures in place regarding cavity searches. He argued that "he did not reasonably know that the defendants committed a[n] intentional tort or an unwanted touching, a[n] assault and [were] negligent at the time the acts [were] committed." Appellant, however, filed this document after the trial court entered its decisions granting appellees' motions for judgment on the pleadings. We thus may not consider appellant's October 11, 2016 filing when reviewing this appeal. *See generally State v. Ishmail* (1978), 54 Ohio St.2d 402, 8 O.O.3d 405, 377 N.E.2d 500, paragraph one of the syllabus ("A reviewing court cannot add matter to the record before it, which was not a part of the trial court's proceedings, and then decide the appeal on the basis of the new matter."); *Saunders v. Holzer Hosp. Found.*, 176 Ohio App.3d 275, 2008-Ohio-1032, 891 N.E.2d 1202, fn.3 (4th Dist.) ("A reviewing court should consider only the evidence that the trial court had before it.").

WL 6488876, ¶13; *In re Estate of Pallay*, 4th Dist. Washington No. 05CA45, 2006–Ohio–3528, 2006 WL 1875899, ¶10; *Robb v. Smallwood*, 165 Ohio App.3d 385, 2005–Ohio–5863, 846 N.E.2d 878, ¶5 (4th Dist.); *Besser v. Griffey*, 88 Ohio App.3d 379, 382, 623 N.E.2d 1326 (4th Dist.1993); *State ex rel. Karmasu v. Tate*, 83 Ohio App.3d 199, 206, 614 N.E.2d 827 (4th Dist.1992). "Limits do exist, however. Leniency does not mean that we are required 'to find substance where none exists, to advance an argument for a pro se litigant or to address issues not properly raised.'" *State v. Headlee*, 4th Dist. Washington No. 08CA6, 2009–Ohio–873, 2009 WL 478085, ¶6, quoting *State v. Nayar*, 4th Dist. Lawrence No. 07CA6, 2007–Ohio–6092, 2007 WL 3407169, ¶28. Furthermore, we will not "conjure up questions never squarely asked or construct full-blown claims from convoluted reasoning." *Karmasu*, 83 Ohio App.3d at 206. We will, however, consider a pro se litigant's appellate brief so long as it "contains at least some cognizable assignment of error." *Robb* at ¶5; *accord Coleman v. Davis*, 4th Dist. Jackson No. 10CA5, 2011–Ohio–506, 2011 WL 345772, ¶14 (considering pro se litigant's brief when it contains "some semblance of compliance" with appellate rules of practice and procedure). In the case sub judice, we believe that appellant's brief does contain some cognizable assignments of error that we may consider on the merits.

II

{¶ 8} For ease of discussion, we first address appellant's second assignment of error. In his second assignment of error, appellant contends that the trial court erred by dismissing his complaint because the court incorrectly determined that the statute of limitations bars his complaint. Appellant appears to agree that, at most, a two-year statute of limitations applies to his claims against appellees. Appellant's brief, however, fails to clarify why he believes the trial

court wrongly determined that he did not file his complaint within the two-year statute of limitations.

{¶ 9} Appellees argue that the trial court correctly determined that the statute of limitations bars appellant's complaint, and thus, that the court properly granted their motions for judgment on the pleadings. Appellees point out that appellant's complaint alleges that the alleged wrongful acts occurred on May 31, 2014, and that he did not file his complaint until June 21, 2016. Appellees therefore assert that appellant failed to file his complaint within either (1) the one-year statutes of limitations applicable to medical claims and to assault and battery, or (2) the two-year statute of limitations applicable to alleged civil rights violations.

{¶ 10} In his reply brief, appellant asserts that he did not discover the facts giving rise to his cause of action until the motion to suppress hearing held in his criminal case, which he states occurred between August 11, 2014 and February 13, 2015.[2] Appellant contends that he did not know or have reason to know of his injury until the suppression hearing. He additionally asserts the he timely filed his complaint in accordance with the prisoner mailbox rule.

A

{¶ 11} Civ.R. 12(C) provides: "After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

> When considering a Civ.R. 12(C) motion for judgment on the pleadings, a court must construe the material allegations in the complaint, along with all reasonable inferences to be drawn therefrom, in favor of the nonmoving party as true.

[2] The record does not contain any documents to show what transpired in the underlying criminal case. A review of the Gallia County Clerk of Court's website indicates that in June 2014, appellant was indicted and charged with drug-related offenses. In August 2014, appellant filed several motions to suppress evidence, including a motion to suppress evidence seized during a cavity search. The docket listing reflects that in February 2015, the court overruled appellant's motion to suppress evidence. Appellant later entered a guilty plea.

> *Rayess v. Educational Comm. for Foreign Med. Graduates*, 134 Ohio St.3d 509, 2012-Ohio-5676, 983 N.E.2d 1267, ¶18. Judgment is proper only if it appears beyond doubt that the nonmoving party can prove no set of facts entitling it to relief. *Id.*

Ohio Manufacturers' Assn. v. Ohioans for Drug Price Relief Act, 147 Ohio St.3d 42, 2016-Ohio-3038, 59 N.E.3d 1274, ¶10; *accord Maynard v. Norfolk S. Ry.*, 4th Dist. Scioto No. 08CA3267, 2009–Ohio–3143, ¶12; *Dolan v. Glouster*, 173 Ohio App.3d 617, 2007–Ohio–6275, 879 N.E.2d 838, ¶7 (4th Dist.). "Consequently, 'as long as there is a set of facts, consistent with the plaintiff's complaint, which would allow the plaintiff to recover, the court may not grant a defendant's motion * * * [for judgment on the pleadings].'" *Kerr v. Logan Elm School Dist.*, 4th Dist. Pickaway No. 14CA6, 2014-Ohio-5838, 2014 WL 7477955, ¶12, quoting *York v. Ohio State Hwy. Patrol* (1991), 60 Ohio St.3d 143, 145, 573 N.E.2d 1063.

{¶ 12} "A motion for judgment on the pleadings is an appropriate vehicle to seek dismissal of a cause of action, where the running of the statute of limitations is apparent from the face of the complaint." *Walling v. Wagner*, 2nd Dist. Montgomery No. 26807, 2016-Ohio-5444, 2016 WL 4418765, ¶3, citing *Oskowski v. Mercy Med. Ctr.*, 2d Dist. Clark No. 95–CA–88, 1996 WL 125915, *2 (Mar. 22, 1996). Accordingly, if "the pleadings unequivocally demonstrate that the action was commenced after the limitations period expired, Civ.R. 12(C) relief is appropriate." *Greenview Local School Dist. Bd. of Edn. v. Staffco Constr., Inc.*, 2016-Ohio-7321, 71 N.E.3d 1275, ¶12 (2nd Dist.).

{¶ 13} "A motion under Civ.R. 12(C) presents only questions of law, and the determination of the motion is restricted solely to the allegations in the pleadings." *Quality Car & Truck Leasing, Inc. v. Pertuset*, 4th Dist. Scioto No. 11CA3436, 2013–Ohio–1964, ¶7. Thus,

appellate courts independently review trial court decisions regarding a Civ.R. 12(C) motion for judgment on the pleadings. *Rayess v. Educational Comm. for Foreign Med. Graduates*, 134 Ohio St.3d 509, 2012–Ohio–5676, 983 N.E.2d 1267, ¶18 ("Because the review of a decision to dismiss a complaint pursuant to Civ.R. 12(C) presents only questions of law, * * * our review is de novo.").

B

{¶ 14} In general, "[s]tatutes of limitations are designed to encourage plaintiffs 'to pursue diligent prosecution of known claims.'" *California Pub. Employees' Retirement Sys. v. ANZ Securities, Inc.*, — U.S. —, 137 S.Ct. 2042, —, 2017 WL 2722415, *6 (June 26, 2017), quoting *CTS Corp. v. Waldburger*, --- U.S. ——, 134 S.Ct. 2175, 2182–2183, 189 L.Ed.2d 62 (2014) (internal quotation marks omitted in original). Additionally, statutes of limitations ensure "fairness to the defendant," suppress "stale and fraudulent claims," and avoid "the inconvenience engendered by delay and by the difficulty of proving older cases." *Cundall v. U.S. Bank*, 122 Ohio St.3d 188, 2009-Ohio-2523, 909 N.E.2d 1244, ¶22, citing *O'Stricker v. Jim Walter Corp.*, 4 Ohio St.3d 84, 88, 447 N.E.2d 727 (1983); *accord Flagstar Bank, F.S.B. v. Airline Union's Mtge. Co.*, 128 Ohio St.3d 529, 2011-Ohio-1961, 947 N.E.2d 672, ¶7.

{¶ 15} A statutory limitations period generally begins "to run 'when the cause of action accrues'—that is, 'when the plaintiff can file suit and obtain relief.'" *California Pub. Employees' Retirement Sys.* at *6, quoting *CTS Corp. v. Waldburger*, 134 S.Ct. at 2182 (internal quotation marks omitted in original). "'Ordinarily, a cause of action accrues and the statute of limitations begins to run at the time the wrongful act'" occurred. *Doe v. Archdiocese of Cincinnati*, 109 Ohio St.3d 491, 2006–Ohio–2625, 849 N.E.2d 268, ¶21, quoting *Collins v.*

Sotka, 81 Ohio St.3d 506, 507, 692 N.E.2d 581 (1998).

{¶ 16} In certain situations, however, applying the general accrual rule "'"would lead to the unconscionable result that the injured party's right to recovery can be barred by the statute of limitations before he is even aware of its existence."'" *Flagstar Bank* at ¶13, quoting *O'Stricker*, 4 Ohio St.3d at 87, 447 N.E.2d 727, quoting *Wyler v. Tripi*, 25 Ohio St.2d 164, 168, 54 O.O.2d 283, 267 N.E.2d 419 (1971). Thus, the discovery rule developed as an exception to the general accrual rule in order to prevent such "unconscionable" results. *Id.*

> The discovery rule provides that a cause of action does not arise until the plaintiff knows, or by the exercise of reasonable diligence should know, that he or she has been injured by the conduct of the defendant. *Collins v. Sotka* (1998), 81 Ohio St.3d 506, 507, 692 N.E.2d 581. The rule entails a two-pronged test—i.e., actual knowledge not just that one has been injured but also that the injury was caused by the conduct of the defendant. *O'Stricker*, 4 Ohio St.3d at 90, 4 OBR 335, 447 N.E.2d 727. A statute of limitations does not begin to run until both prongs have been satisfied.

Flagstar Bank at ¶14.

{¶ 17} In the case at bar, appellant agrees that, at most, a two-year statute of limitations applies to his claims.[3] Because appellant agrees that he had, at most, two years after his causes of action accrued to file his complaint, we do not find it necessary to fully decide which statutes of limitations apply to his causes of action. We nonetheless note that R.C. 2305.10(A) governs actions for bodily injury and requires such actions to "be brought within two years after the cause of action accrues." R.C. 2305.10(A) also applies to actions alleging civil rights violations. *Nadra v. Mbah*, 119 Ohio St.3d 305, 2008-Ohio-3918, 893 N.E.2d 829, syllabus ("R.C. 2305.10

[3] We recognize that in his reply brief, appellant asserts that the four-year statute of limitations applicable to fraud claims might apply because "the defendants [sic] actions could be construed as deceitful and committed as an act of fraud." He then states, however, that he "understands that the two (2) year limitations period will stand/be applied."

is Ohio's general statute of limitations for personal injury and thus is applicable to claims under Section 1983, Title 42, U.S. Code filed in state court."). The statute states that "a cause of action accrues under this division when the injury or loss to person or property occurs."

{¶ 18} R.C. 2305.113(A) requires an action upon a medical claim to "be commenced within one year after the cause of action accrued." The statute defines a "medical claim" as follows:

> any claim that is asserted in any civil action against a physician, * * * hospital, * * * against any employee or agent of a physician, * * * hospital, * * *, or against a licensed practical nurse, registered nurse, advanced practice registered nurse, * * *, and that arises out of the medical diagnosis, care, or treatment of any person.

R.C. 2305.113(E)(3).

{¶ 19} R.C. 2305.111(B) requires an action for assault or battery to "be brought within one year after the cause of the action accrues." The statute specifies when a cause of action for assault or battery accrues and states:

> * * * * [A] cause of action for assault or battery accrues upon the later of the following:
>
> (1) The date on which the alleged assault or battery occurred;
>
> (2) If the plaintiff did not know the identity of the person who allegedly committed the assault or battery on the date on which it allegedly occurred, the earlier of the following dates:
>
> (a) The date on which the plaintiff learns the identity of that person;
>
> (b) The date on which, by the exercise of reasonable diligence, the plaintiff should have learned the identity of that person.

{¶ 20} In the case sub judice, appellant filed his complaint on June 21, 2016. His complaint alleges that appellees' conduct occurred on May 31, 2014. The pleadings thus reveal that appellant did not file his complaint within two years of the alleged wrongful conduct. The

pleadings do not contain any indications that the discovery rule applies. The pleadings therefore unequivocally show that the statute of limitations bars appellant's complaint.

{¶ 21} We point out that appellant's initial brief does not clearly explain why he believes he filed his June 21, 2016 complaint within two years of May 31, 2014–the date of the alleged wrongful conduct. In his reply brief, however, appellant appears to assert that he did not discover the wrongful nature of appellees' conduct until the trial court held the motion to suppress hearing in his criminal trial.

{¶ 22} "Appellate courts generally will not consider a new issue presented for the first time in a reply brief." *State v. Spaulding*, ––– Ohio St.3d ––––, 2016–Ohio–8126, ––– N.E.3d ––––, ¶179, quoting *State v. Quarterman*, 140 Ohio St.3d 464, 2014–Ohio–4034, 19 N.E.3d 900, ¶18. Instead, the purpose of a reply brief is to afford the appellant an opportunity to respond to the appellee's brief, not to raise an issue for the first time. *State v. Mitchell*, 10th Dist. Franklin No. 10AP–756, 2011–Ohio–3818, ¶47. Consequently, an "'appellant cannot raise an issue for the first time in a reply brief, and thus effectively deny the appellee an opportunity to respond to it.'" *State v. Nguyen*, 4th Dist. Athens No. 12CA14, 2013–Ohio–3170, 2013 WL 3816605, ¶34, quoting *Nemeth v. Nemeth*, 11th Dist. Geauga No. 2007–G–2791, 2008–Ohio–3263, ¶22.

{¶ 23} In the case at bar, appellant did not raise his argument regarding the discovery rule in his initial appellate brief. Rather, he raised it for the first time in his reply brief. By failing to raise it in his initial brief, appellant deprived appellees of the opportunity to respond to the issue. We therefore decline to consider appellant's argument that the discovery rule tolled the running of the statute of limitations. Nevertheless, we further note that appellant's discovery rule argument appears meritless. *Venegas v. Wagner*, 704 F.2d 1144, 1146 (9th Cir. 1983)

(noting that a cause of action for illegal search and seizure accrues when the wrongful act occurs); *Starr v. Hicks*, N.D. Oklahoma No. 11-CV-741, 2012 WL 2031218, *3 (June 6, 2012) (determining that plaintiff's civil rights causes of action accrued on date of arrest, search, and seizure); *Rodriguez v. New York*, S.D. New York No. 10CIV1849, 2011 WL 4344057, *2 (Sept. 7, 2011) (concluding that civil rights cause of action accrued on date of cavity search); *see Holman v. Dept. of Commerce*, 10th Dist. Franklin No. 12AP-983, 2013-Ohio-3497, 2013 WL 4056226 (determining that trial court did not err by dismissing complaint on statute of limitations grounds when appellant's complaint did not allege any facts indicating that discovery rule applies); *see Hershberger v. Akron City Hosp.*, 34 Ohio St.3d 1, 5, 516 N.E.2d 204 (1987) (explaining that knowledge of facts, not legal theories, starts running of statute of limitations); *Al-Mosawi v. Plummer*, 2nd Dist. Montgomery No. 24985, 2012-Ohio-6034, 2012 WL 6674490, ¶23 (determining that discovery rule did not apply when plaintiff knew facts constituting injury and rejecting assertion that "[i]gnorance of the law" tolls the statute of limitations).

{¶ 24} Appellant further argues that the prisoner mailbox rule applies and shows that he timely filed his complaint.[4] In *Houston v. Lack*, 487 U.S. 266, 270, 108 S.Ct. 2379, 101 L.Ed.2d 245 (1988), the United States Supreme Court held that under Federal Rules of Appellate Procedure 4(a)(1) and 3(a), a pro se petitioner's notice of appeal is deemed filed on the date that it is turned over to prison officials for transmittal to the court. The Ohio Supreme Court, however, declined to interpret the Ohio rules in the same manner. *State ex rel. Tyler v. Alexander*, 52 Ohio St.3d 84, 84–85, 555 N.E.2d 966 (1990). Instead, the court rejected any

[4] The OSHP defendants raised the prisoner mailbox issue in their appellate brief. Thus, unlike the discovery rule, the prisoner mailbox rule is not being raised for the first time in appellant's reply brief.

argument that "'filed in the court * * *' really means 'delivered to the prison mail room.'" We therefore reject appellant's argument that he timely filed his complaint by allegedly delivering it to the prison mail room before May 31, 2014.

{¶ 25} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III

{¶ 26} In his first assignment of error, appellant argues that the trial court abused its discretion by overruling the various procedural[5] motions that he filed. Appellant further asserts that the trial court did not rule on his motions in a timely manner. We believe, however, that even if the trial court arguably erred in either respect, any error would be harmless error that we must disregard. *See* Civ.R. 61 (explaining that court "must disregard any error or defect in the proceeding" that does not affect a party's substantial rights); *Niskanen v. Giant Eagle, Inc.*, 122 Ohio St.3d 486, 2009-Ohio-3626, ¶26, 912 N.E.2d 595, quoting *Smith v. Flesher*, 12 Ohio St.2d 107, 110, 233 N.E.2d 137 (1967) (explaining that "'in order to secure a reversal of a judgment,'" a party "'must not only show some error but must also show that that error was prejudicial to him'"); *Theobald v. Univ. of Cincinnati*, 160 Ohio App.3d 342, 2005-Ohio-1510, 827 N.E.2d 365, ¶17 ("When avoidance of the error would not have changed the outcome of the proceedings, then the error neither materially prejudices the complaining party nor affects a substantial right of the complaining party."). For purposes of argument, even if we believed that the trial court should have granted all or some of appellant's motions, or ruled on the motions more

[5] We discuss appellant's motion to appoint counsel in his third assignment of error and do not include it in our discussion of appellant's second assignment of error regarding the various procedural motions he filed.

expeditiously, appellant cannot show that the result of the proceedings would have been different.[6] Nothing in the record indicates that granting any of appellant's requests would have changed the fact that he filed his complaint more than two years after his causes of action accrued. Consequently, any error the court committed did not affect appellant's substantial rights and constitutes harmless error that we must disregard.

{¶ 27} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

IV

{¶ 28} In his third assignment of error, appellant asserts that the trial court violated his due process rights by refusing his request to appoint counsel.

{¶ 29} An indigent person ordinarily does not have a constitutional right to appointed counsel in a civil case. *M.L.B. v. S.L.J.*, 519 U.S. 102, 119, 117 S.Ct. 555, 136 L.Ed.2d 473 (1996); *State ex rel. McQueen v. Cuyahoga Cty. Court of Common Pleas, Probate Division*, 135 Ohio St.3d 291, 2013-Ohio-65, 986 N.E.2d 925, ¶9; *State ex rel. Burnes v. Athens Cty. Clerk of Courts*, 83 Ohio St.3d 523, 524, 700 N.E.2d 1260 (1998) (stating that "unlike criminal litigation, there is no general right of counsel in civil litigation"); *State ex rel. Jenkins v. Stern*, 33 Ohio St.3d 108, 110, 515 N.E.2d 928, 930–31 (1987). Instead, an indigent Ohio citizen is entitled to appointed counsel in a civil case when counsel is statutorily- or constitutionally-mandated. *State v. Bode*, 144 Ohio St.3d 155, 2015-Ohio-1519, 41 N.E.3d 1156, ¶13-15 and 19 (noting that

[6] In reviewing appellant's various motions, it is not clear whether he requested an extension of time to respond to appellees' motions for judgment on the pleadings. Moreover, appellant has not specifically argued on appeal that the trial court erred by denying a request for extension of time to respond to appellees' motions, and none of the appellees have raised the issue. In light of these circumstances, we do not address the issue.

juveniles have constitutional, due process right to counsel in delinquency proceedings–which are civil proceedings–as well as statutory right); *State ex rel. McQueen* at ¶9 and 19 (concluding that plain language of statute required appointed counsel), citing *State ex rel. Asberry v. Payne,* 82 Ohio St.3d 44, 693 N.E.2d 794 (1998); *see Liming v. Damos,* 133 Ohio St.3d 509, 2012-Ohio-4783, 979 N.E.2d 297, ¶28.

{¶ 30} In the case sub judice, appellant's complaint is an ordinary civil action seeking monetary compensation for alleged wrongful conduct in conducting a traffic stop, arrest, and cavity search. We have found no authority to support a conclusion that appellant has a statutory or constitutional right to counsel in this type of case. Consequently, we disagree with appellant that the trial court erred by denying his request for appointed counsel.

{¶ 31} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the judgment be affirmed and that appellee recover of appellant the costs herein taxed.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Gallia County Common Pleas Court to carry this judgment into execution.

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

Harsha, J. & McFarland, J.: Concur in Judgment & Opinion

For the Court

BY:_____
Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.