

**FIRST DISTRICT COURT OF APPEALS
HAMILTON COUNTY, OHIO**

M.R., a Cincinnati Police	:	Case No. C2000302
Officer, pleading pseudonymously,	:	
Plaintiff-Appellee,	:	
	:	
v.	:	MOTION TO DISMISS APPEAL OF
	:	DEFENDANTS-APPELLANTS AND
	:	REQUEST FOR EXPEDITED
JULIE NIESEN, et al.,	:	HEARING
Defendant-Appellant.	:	

Plaintiff, M.R., by and through counsel, moves to dismiss the appeal filed by Julie Niesen and Terhas White. The temporary restraining order issued by Judge Shanahan was not a final, appealable order as contemplated by R.C. 2505.02(B). The grounds for this motion are more fully set forth in the attached memorandum. An entry granting this motion is attached as required by First District Court of Appeals Local Rule 15.1(A).

Respectfully submitted,

s/ Zachary Gottesman
Zachary Gottesman (0058675)
Peter J. Stackpole (0072103)
Trial Attorneys for Plaintiff-Appellant
Gottesman & Associates, LLC
404 E 12th Street, First Floor
Cincinnati, OH 45202
T: 513/651-2121
F: 513/651-2131
zg@zgottesmanlaw.com
peterjustinstackpole@gmail.com

s/ Robert J. Thumann
Robert J. Thumann (0074975)
Crehan & Thumann, LLC
404 E. 12th Street, Second Floor
Cincinnati, Ohio 45202
T: 513/381-5050
F: 513/381-1700
Thumann@ctlawcincinnati.com

MEMORANDUM

I. Introduction

Plaintiff, M.R., a Cincinnati Police Officer, sought a Temporary Restraining Order and Preliminary Injunction to order Defendants Julie Niesen (“Niesen”), Terhas White (“White”), and James Noe (“Noe”) to remove posts, and enjoin future posting, on social media platforms which portray Plaintiff falsely as a “white supremacist” and to enjoin them from publicizing Plaintiff’s personal identifiable information in social media posts. After a hearing, the trial court granted the temporary restraining order in part on July 24, 2020, enjoining the defendants from publicizing, through social media or other channels, plaintiff’s personal identifying information. See Amended Entry Granting Plaintiff’s Motion for Temporary Restraining Order in Part, attached to the notice of appeal filed in this Court by Defendants’ Niesen and White on August 18, 2020. A hearing on preliminary injunctive relief was scheduled to be held on July 30, 2020, but at the request of counsel for Terhas White, the hearing was delayed until September 1, 2020. Before a hearing on preliminary injunctive relief could be held, the Defendants appealed the trial court’s decision to grant, in part, a temporary restraining order.

II. Facts¹

On June 25, 2020, Niesen published a post on a social media platform, in which she portrayed Plaintiff falsely as a “white supremacist”. Niesen’s false social media post garnered widespread public attention. Niesen’s false social media post created a risk of harm to Plaintiff and his family. Niesen’s false social media post is serious enough to be highly offensive to a reasonable person.²

¹ Plaintiff incorporates by reference the First Affidavit of M.R., which was attached to plaintiff’s complaint and filed on July 22, 2020 in the Court of Common Pleas of Hamilton County, Ohio in case number A2002596.

² See Exhibit 1 to First Affidavit of M.R.

Likewise, on that same date, Noe published a false post on a social media platform in which he referred to Plaintiff as a limp-dicked POS [piece of shit] and claimed that Plaintiff was flashing the “white power symbols to Black speakers.” Noe included a deceptively edited photograph of the Plaintiff in his social media post to portray Plaintiff as a “white supremacist.” Noe’s false social media post is serious enough to be highly offensive to a reasonable person. Noe threatened to publicize Plaintiff’s personal identifiable information in his social media posts.³

III. Law and Argument

Section 3(B)(2) of Article IV of the Ohio Constitution provides that a judgment of a trial court can be immediately reviewed by an appellate court only if it constitutes a “final order” in the action. The Ohio Revised Code provides five categories of final orders that may be immediately appealed and reviewed by a court of appeals. R.C. 2505.02(B) provides that an order is a final order when it is: “(4) An order that grants or denies a provisional remedy and to which both of the following apply: (a) The order in effect determines the action with respect to the provisional remedy and prevents a judgment in the action in favor of the appealing party with respect to the provisional remedy; (b) The appealing party would not be afforded a meaningful or effective remedy by an appeal following final judgment as to all proceedings, issues, claims, and parties in the action.” R.C. 2505.02(B); *Neomonitis v. Gilmour Academy*, 8th Dist. No. 92452, 2009-Ohio-2023 at para. 6. Furthermore, “[a]n order of the court of common pleas granting a temporary injunction in a suit in which the ultimate relief sought is an injunction, is not either a judgment or a final order which may be reviewed by the circuit court on a petition in error.” *State ex rel. Tollis v. Cuyahoga Cty. Court of Appeals* (1988), 40 Ohio St.3d 145, 532 N.E.2D 727. Finally, Ohio courts have held that “a preliminary injunction which acts to maintain the status quo pending a

³ See Exhibit 2 to First Affidavit of M.R.

ruling on the merits is not a final appealable order under R.C. 2505.02.” *Neomonitis*, 2009-Ohio-2023 at para. 11 (quoting *E. Cleveland Firefighters, IAFF Local 500 v. E. Cleveland*, Cuyahoga App. No. 88273, 2007-Ohio-1447).

Here, the trial court granted a temporary restraining order to preserve the Plaintiff’s rights while the underlying action was litigated. Accordingly, the temporary restraining order is not a final, appealable order and this appeal should be dismissed. Niesen, White, and the other Defendants portrayed the Plaintiff as a “white supremacist.” Some of the defendants have threatened to disclose his personal identifying information, which would put him and his family at risk of serious physical harm. The oral and written statements of the Defendants were made with actual malice, were defamatory, and constituted a false light invasion of privacy as recognized in *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451. Not only was the portrayal of the Plaintiff as a white supremacist untrue and deeply harmful to this officer’s reputation, his career, and his family, the defamatory statements made by the Defendants were presented as factual statements, not opinion, based on nothing other than his use of the okay symbol when responding to a question as to whether a security guard was okay. The Defendants should not be permitted to circumvent discovery and the preliminary hearing in this matter by claiming that the maliciously false and defamatory statements are protected by the First Amendment. As the Ohio Supreme Court stated in *Welling*, “Today, thanks to the accessibility of the Internet, the barriers to generating publicity are slight, and the ethical standards regarding the acceptability of certain discourse have been lowered. As the ability to do harm has grown, so must the law's ability to protect the innocent.” *Welling*, 2007-Ohio-2451 at para. 60.

This case is nothing like *National Social Party of Am.v. Village of Skokie*, 432 U.S. 43 (1977) because false light and defamatory statements are not entitled to protection under the First

Amendment. The appeal of this partial grant of a temporary restraining order should be dismissed because it is not a final, appealable order under R.C. 2505.02(B)(4), and there is no basis to maintain an interlocutory appeal on this record.

IV. Conclusion

Based on the foregoing, Plaintiff respectfully requests that this Court dismiss the Defendants’ appeal. The Plaintiff should be allowed to go forward with his claims and vindicate his reputation.

Respectfully submitted,

/s/ Zachary Gottesman
Zachary Gottesman (0058675)
Peter J. Stackpole (0072103)
Gottesman & Associates, LLC
404 E 12th Street, First Floor
Cincinnati, OH 45202
T: 513-651-2121
F: 513-651-2131
zg@zgottesmanlaw.com
peterjustinstackpole@gmail.com
Attorneys for the Plaintiff

s/ Robert J. Thumann
Robert J. Thumann (0074975)
Crehan & Thumann, LLC
404 E. 12th Street, Second Floor
Cincinnati, Ohio 45202
T: 513/381-5050
F: 513/381-1700
Thumann@ctlawcincinnati.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served electronically on counsel of record this 20th day of August 2020.

/s/ Zachary Gottesman
Zachary Gottesman (0058675)

**FIRST DISTRICT COURT OF APPEALS
HAMILTON COUNTY, OHIO**

M.R., a Cincinnati Police	:	Case No. C2000302
Officer, pleading pseudonymously,	:	
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	
JULIE NIESEN, et al.,	:	ENTRY GRANTING PLAINTIFF’S
Defendant-Appellant.	:	MOTION TO DISMISS APPEAL

For the reasons set forth in Plaintiff’s motion, the Defendants’ appeal is dismissed because the trial court’s decision to grant, in part, a temporary restraining order is not a final, appealable order under R.C. 2505.02(B).

IT IS SO ORDERED.

JUDGE
FIRST DISTRICT COURT OF APPEALS