

O'Grady

IN THE FRANKLIN COUNTY MUNICIPAL COURT
CIVIL DIVISION
FRANKLIN COUNTY, OHIO

Veronica Wagner Covatch, *et al.*, :

Plaintiffs :

-vs.- :

Central Ohio Sheltie Rescue, Inc., *et al.*, :

Defendants :

CASE NO.: 2014-CVF-024571

Judge: O'Grady

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DEFENDANTS' MEMORANDUM IN OPPOSITION TO "MOTION TO STRIKE"

Now come the Defendants in the above-captioned action, Central Ohio Sheltie Rescue, Inc., hereinafter referred to individually as, "Defendant COSR," and Penny Sanderbeck, hereinafter referred to individually as, "Defendant Sanderbeck," collectively hereinafter referred to as, "these Answering Defendants," and by and through their undersigned attorney, they offer the following Memorandum in Opposition to the "Motion to Strike Memorandum of Defendants Central Ohio Sheltie Rescue, Inc., and Penny Sanderbeck Regarding Motion to Dismiss," hereinafter referred to as the "Motion to Strike," which was filed April 17, 2015. For the reasons and authorities contained in the following Memorandum, the Court should OVERRULE the Motion to Strike.

Respectfully submitted,

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MEMORANDUM IN OPPOSITION

The Plaintiffs have filed a “Motion to Strike Memorandum of Defendants Central Ohio Sheltie Rescue, Inc., and Penny Sanderbeck Regarding Motion to Dismiss,” on April 17, 2015, in which they ask the Court to strike the reply Memorandum filed by these Answering Defendants on April 9, 2015.

For the following reasons, the Plaintiffs’ “Motion to Strike” should be overruled.

First, the “Motion to Strike” is out of rule. The ‘Motion to Strike’ is provided in Rule 12(F) of the Ohio Rules of Civil Procedure, which states,

“(F) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within twenty-eight days after the service of the pleading upon him or upon the court’s own initiative at any time, the court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, or scandalous matter.”

A Memorandum is not a “pleading” as that term is used in Rule 12(F). Rule 7(A) of the Ohio Rules of Civil Procedure, entitled, “Pleadings and Motions,” states:

“(A) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Civ.R. 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.”

The Reply Memorandum that is the subject of the Plaintiffs’ “Motion to Strike” is not a complaint, answer, a reply to a counterclaim and an answer to a third-party claim. Since a Motion to Strike under Rule 12(F) is directed at “pleadings,” it does not lie to challenge these Answering Defendants’ Reply Memorandum.

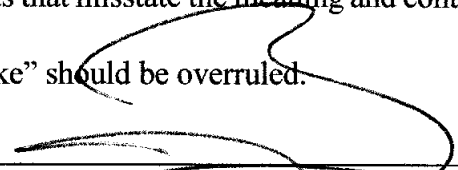
Third, the gravamen of the "Motion to Strike" is that the Reply Memorandum "addresses factual matters which are not in evidence in this case and which cannot properly be considered on a motion to dismiss." These Answering Defendants do not dispute that a motion to dismiss cannot be based upon factual disputes and that the well-pleaded facts of a Complaint must be taken as true for purposes of such a Motion.

The Reply Memorandum is, indeed, addressed in part to a factual matter (the date on which the dog was released by the County Shelter). However, the Reply Memorandum was not intended to argue for any specific resolution of that factual issue. Such an effort would be inappropriate.

Rather, the portion of the Reply Memorandum addressed to this issue was solely intended to inform the Court that the Plaintiffs' own submissions contradicted their assertion that the dog was released on April 20, 2014. For example, see the Plaintiffs' "Affidavit in Replevin" filed August 6, 2014, Exhibit A. Since the Plaintiffs were the ones who submitted the documents that establish the release date of April 21, 2014, the Plaintiffs should be estopped by their own submissions from asserting that the date of the release was April 20, 2014. Since the Reply Memorandum was only intending to point out flaws in the Plaintiffs' own submissions, and not to offer additional evidence nor to argue for resolution of any factual dispute, it was appropriate.

In conclusion, the Plaintiffs' "Motion to Strike" is out-of-rule, and further, it fails under the weight of its on fallacious assumptions and arguments that misstate the meaning and content of the Reply Memorandum. Therefore, the "Motion to Strike" should be overruled.

Respectfully submitted,



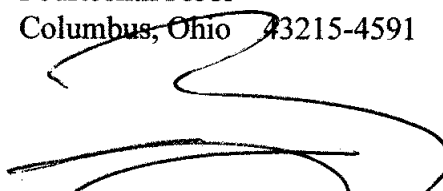
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CERTIFICATE OF SERVICE

I hereby certify that on this twenty-second (22nd) day of April 2015, I have served a true copy of the foregoing DEFENDANTS' MEMORANDUM IN OPPOSITION TO "MOTION TO STRIKE" upon all parties or counsel entitled to such service, by hand delivery, or by placing it in regular U.S. Mail, first class postage fully prepaid, addressed to:

Mr. James H. Banks, Esq., and
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