LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO
AMENDED JOURNAL ENTRY
Hon. D. Chris Cook, Judge

Date Mar. 27, 2023 Case No. 19CV200187

LYNDA ROBINHOLT
Plaintiff

Eric Valente
Plaintiff's Attorney

VS

ROBERT D. WILSON, *et al.*
Defendants

Michael Wilson
Defendant's Attorney

This matter is before the Court on Plaintiff, Lynda Robinholt's, Motion for Reconsideration of the Entry Denying Plaintiff's Motion to Withdraw Deemed Admissions, filed March 2, 2023, and Defendant, Robert D. Wilson's, Brief in Opposition to Reconsideration, filed March 16, 2023.

The Court rules as follows (*Amended*): **THE MOTION FOR RECONSIDERATION IS WELL-TAKEN AND GRANTED. PLAINTIFF'S ADMISSIONS PREVIOUSLY DEEMED ADMITTED ARE HEREBY WITHDRAWN AND HER (THREE) RESPONSES ARE DEEMED TIMELY FILED.**

This matter is hereby scheduled for telephonic pre-trial on **March 30, 2023, at 3:00 p.m.** Counsel is Ordered to call into the Court at 440-329-5417.[1]

IT IS SO ORDERED. See Judgment Entry. No Record.

JUDGE D. CHRIS COOK

cc: Valente, Esq.
Wilson, Esq.

[1] Consistent with the Court's Order of February 16, 2023, the Court will defer to the Defendant's suggested timetable and scope of discovery, as well schedule leave for the Defendant to file a renewed motion for summary judgment.

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I. INTRODUCTION

This matter is before the Court on Plaintiff, Lynda Robinholt's, Motion for Reconsideration of the Entry Denying Plaintiff's Motion to Withdraw Deemed Admissions, filed March 2, 2023, and Defendant, Robert D. Wilson's, Brief in Opposition to Reconsideration, filed March 16, 2023.

II. PROCEDURAL HISTORY

On December 30, 2019, Plaintiff, Lynda Robinholt ("Robinholt"), filed a complaint against Defendant, Robert D. Wilson ("Wilson"), in his individual capacity and as successor trustee of a trust[2], alleging, *inter alia*, 1) breach of fiduciary duty; 2) breach of trust; and 3) an accounting claim.

After unsuccessfully moving to dismiss Robinholt's complaint, Wilson filed an answer as well as several counterclaims, to wit: 1) for advancements and loans she allegedly took from the trust; 2) for intentional interference with expectancy of inheritance; 3) to have her declared a vexatious litigator; 4) to obtain attorney's fees pursuant to statute; 5) to obtain attorney's fees pursuant to the trust; 6) for defamation and defamation *per se*; and, 7) for punitive damages.

The parties engaged in extensive discovery including One Hundred and Fifty (150) requests for admissions ("RFA") propounded upon Robinholt by Wilson. The parties (it appears) agree that Wilson's first set of RFA's were served upon Robinholt on July 14, 2020, and by rule were due on August 11, 2020.

[2] The genesis and relevance of the trust will be discussed *infra*.

On August 11, 2020, at 10:14 p.m., Robinholt alerted Wilson *via* an email that she needed an additional "couple days" to serve him with her discovery responses.

The next morning, on August 12, 2020, at 10:36 a.m., *via* email, Robinholt served Wilson with her responses to the RFA's.

On August 14, 2020, also *via* email, Robinholt served Wilson with a First Supplement to the RFA's.

On January 20, 2021, Robinholt filed a Motion to Amend[3] and on February 11, 2021, Wilson filed a Brief in Opposition. On February 17, 2021, Robinholt filed a Reply in Support.

On March 5, 2021, again *via* email, Robinholt served Wilson with a Second Supplement to the RFA's.

On April 26, 2021, the Court filed an Entry stating that any pending motion not granted was "hereby denied."[4]

On May 12, 2021, Robinholt filed a Motion for Clarification and Reconsideration in order to clarify if the Court Order of April 26, 2021, included her motion to amend and if so, to reconsider same.[5]

On July 16, 2021, the Court granted Wilson summary judgment and dismissed Robinholt's complaint. The Court also granted Robinholt summary judgment on Wilson's counterclaim, but only on count two, his intentional interference with expectancy of inheritance claim.[6]

On August 17, 2021, Robinholt filed an appeal of the dismissal of her complaint with the Ninth District Court of Appeals[7] - Wilson did not file a cross-appeal. In the appeal, Robinholt raised two assignments of error, to wit: 1) that this Court erred by granting Wilson summary judgment and dismissing her complaint; and 2) the Court erred when it denied her motion to withdraw or amend her deemed responses to Wilson's RFA's.

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[3] At this point, Wilson had taken the position that the RFA's were "deemed" admitted.
[4] This presumably included Robinholt's motion to amend.
[5] It does not appear that the Court ever ruled on this motion.
[6] Despite the fact that the Court's Entry did not dispose of all matters, the Court designated it as a final, appealable order.
[7] See Case No. 21CA011782, 2023-Ohio-248.

On January 30, 2023, the Ninth District reversed this Court's granting of summary judgment in favor of Wilson and reinstated Robinholt's complaint. The Ninth District dismissed her second assignment of error as this Court's decision to deny Robinholt's motion to withdraw or amend her deemed admitted admissions was not a final, appealable order.

Subsequent to remand, on February 16, 2023, this Court granted Robinholt leave to file for reconsideration of its prior ruling on her motion to withdraw or amend her deemed admitted admissions.[8] In the same Order, the Court granted Wilson's request to reopen discovery and to file a renewed motion for summary judgment in the event the Court granted the motion for reconsideration.

The motion for reconsideration relative to the RFA's is now ripe for determination.[9]

III. ABBREVIATED STATEMENT OF FACTS

As this Court accurately pointed-out in its summary judgment Order of July 16, 2021, and corroborated by the Ninth District, this case involves a long, tortured, and contentious action between a sister (Robinholt) and brother (Wilson) and their epic battle over the *corpus* and control of a trust established by their parents in 2005.

Robinholt and Wilson were the named survivor beneficiaries of the trust and in 2017, after their last surviving parent passed away, Wilson (who is also an attorney-at-law in Ohio) assumed responsibility for its administration.

Both this Court's summary judgment Order of July 16, 2021, and the Ninth District's Appellate Decision, chronicle the genesis of the parties' controversy and acrimonious litigation spanning multiple court filings, jurisdictions, and actions. Thankfully, none of that needs repeating here for resolution of the issue at bar.

As such, the sole issue before the Court is whether or not to allow Robinholt leave to withdraw and/or amend her deemed admitted responses to Wilson's RFA's.

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[8] Ostensibly this Court's Order of April 26, 2021.

[9] This Court is aware that Wilson has filed a motion for reconsideration in the Ninth District case that as of the date of this Order remains pending. A motion for reconsideration, unlike a notice of appeal, does not divest this Court of jurisdiction to proceed. *State ex rel. Special Prosecutors,* 55 Ohio St. 2 94 (1978).

IV. LAW AND STANDARD OF REVIEW

RECONSIDERATION

As this Court enunciated in its Order of March 3, 2023, the standard of review for a motion for reconsideration at the trial court level of an interlocutory order is well-settled,

> Succinctly stated, the Rules of Civil Procedure specifically limit relief from judgments to motions expressly provided for within the same Rules. A motion for reconsideration is conspicuously absent within the Rules. Rather the Civil Rules do allow for relief from final judgments by means of Civ.R. 50(B) (motion notwithstanding the verdict), Civ.R. 59 (motion for a new trial), and Civ.R. 60(B) (motion for relief from judgment)." *Pitts v. Ohio Dept. of Trans.*, 67 Ohio St.2d 378, 380, (1981).

As noted above, the ruling denying Robinholt's original motion to withdraw or amend deemed admissions (if in fact there really was such a ruling) was not a final, appealable order, it was an *interlocutory* order.[10] As such, it was not a final judgment and is subject to review and reconsideration by the Court. See: *In re Guardianship of Bakhtiar,* 9th Dist. Lorain No. 16Ca011036, 2018-Ohio-1764, at ¶ 9,

> Generally, discovery orders are not immediately appealable because they are interlocutory. *Walters v. Enrichment Ctr. of Wishing Well, Inc.*, 78 Ohio St.3d 118, 120–121, (1997).

It is axiomatic that a decision by a trial court to grant or deny a motion to withdraw or amend responses to requests for admissions is a "discovery order." As such, despite Wilson's protestations[11], this Court is well-within its jurisdiction to give Robinholt leave to file for reconsideration.

REQUESTS FOR ADMISSIONS

Civ.R. 36 embodies the process and procedure for utilizing requests for admissions as a discovery tool. It reads, in pertinent part,

> The matter is admitted unless, within a period designated in the request, not less than twenty-eight days after service of the request or within such shorter or

[10] This is so because as noted by the Ninth District, this Court never entered a final, appealable order on this issue.

[11] See Page 1, Para. Two of Wilson's Brief in Opposition.

> longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's attorney.

Civ.R. 36(A)(1).

Importantly for this matter, the rule also provides,

> Any matter admitted under this rule is conclusively established **unless the court on motion permits withdrawal or amendment of the admission**. Subject to the provisions of Civ. R. 16 governing modification of a pretrial order, **the court may permit withdrawal or amendment when the presentation of the merits of the action will be subserved thereby** and **the party who obtained the admission fails to satisfy the court that withdrawal or amendment will prejudice the party** in maintaining his action or defense on the merits.

Civ.R. 36(B), emphasis added.

The Ninth District Court of Appeals, like all appellate districts and the Supreme Court of Ohio, have frequently dealt with Civ.R. 36 and the conundrum often posed with untimely responses.

> It is well settled in Ohio that unanswered requests for admissions cause the matter requested to be conclusively established for the purpose of the suit, and that a motion for summary judgment may be based on such admitted matters. *Cleveland Trust Co. v. Willis,* 20 Ohio St.3d 66, 67, (1985); *Mgt. Recruiters–Southwest v. Holiday Inn–Denver,* 9th Dist. Medina No. 2582–M, 1997 WL 209137, *2 (Apr. 23, 1997); *Klesch v. Reid,* 95 Ohio App.3d 664, 675, (8th Dist.1994). As this Court has stated, "a party's failure to timely respond to request[s] for admissions results in default admissions * * * 'which the court must recognize.' " *Marusa v. Brunswick,* 9th Dist. Medina No. 04CA0038–M, 2005–Ohio–1135, ¶ 20, quoting *Willis* at 67. "**From a practical standpoint, however, a party typically moves the trial court to 'deem' the matters admitted to bring the issue to the trial court's attention and to make the default admissions, which may not have been filed previously with the court, part of the trial court record.**" *Id.*

Hess v. Satink, 9th Dist. Summit No. 27729, 2016-Ohio-4684, at ¶ 10, emphasis added.

Regarding a trial court's ability to withdraw or amend admissions (whether admitted or deemed admitted), the Ninth District's seminal case on the issue directs as follows,

> A trial court's decision to grant or deny a request for withdrawal of an admission rests within its discretion. *National City Bank, NE v. Moore* (March 1, 2000), 9th Dist. No. 19465. In order to find an abuse of discretion, this Court must determine that the trial court's decision was unreasonable, arbitrary or unconscionable and not merely an error of law or judgment. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

Albrecht v. Hambones, 9th Dist. Summit No. 20993, 2002-Ohio-5939, at ¶ 11.

The Ninth District continued,

> Under Civ.R. 36(A), a party may serve a request for admissions upon another party. The purpose of this process is to facilitate early resolution of potentially disputed issues, thereby expediting the trial. *Cleveland Trust Co. v. Willis* (1985), 20 Ohio St.3d 66, 67, certiorari denied (1986), 478 U.S. 1005. The rule provides that each requested admission is admitted unless, within a designated period of not less than twenty-eight days after service, or within a shorter or longer time as allowed by the court, the party to whom the request is directed serves upon the requesting party a written answer or objection.

Albrecht, at ¶ 12.

And,

> Upon a showing of compelling circumstances, the trial court may allow untimely replies to avoid the admissions.

Albrecht, at ¶ 15.

This case is compelling and instructive as the facts and circumstances in *Albrecht* are substantially more egregious than those at bar. In *Albrecht,* a party was served RFA's but claimed they did not receive them. The party that propounded the RFA's then filed a motion to deem them admitted, which put the served party on notice of the RFA's. The court granted the motion and deemed the unanswered RFA's admitted.

Despite being on notice of the RFA's, the served party, (the "Kastors,") did not answer or request additional time to answer even after receiving Albrecht's motion to deem them admitted. Thereafter, the Kastors moved the trial court to vacate or withdraw the deemed admissions – the court denied their motion. Despite the fact that the Kastors did not present evidence of any compelling circumstances that prevented them from timely answering the RFA's, the Ninth District determined that the trial court should have granted the motion to vacate or withdraw the deemed admissions.

> The Kastors also argue that the trial court should have granted their motion to vacate or withdraw because it would aid the presentation of the merits of the case and would not prejudice Albrecht in maintaining its cause of action. **This Court agrees.**

Albrecht, at ¶ 16, emphasis added.

In reaching this conclusion, the Ninth District provided trial courts with a roadmap on how to adjudicate these disputes,

> Any matter admitted under Civ.R. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Civ.R. 36(B). The court may permit the withdrawal **if it will aid in presenting the merits of the case** and **the party who obtained the admission fails to satisfy the court that withdrawal will prejudice him** in maintaining his action. 20 Ohio St.3d at 67, 485 N.E.2d 1052. See, also, *Amer, Cunningham, Brennan, Co., L.P.A. v. Sheeler* (Apr. 28, 1999), 9th Dist. No. 19093.
>
> The Kastors established that allowing withdrawal or amendment of the admissions would aid in the presentation of the merits of their case. Allowing the Kastors to withdraw or amend their admissions would permit them to argue that assignment of the lease to Hambones relieved them of their liability to Albrecht. Therefore, Albrecht had the burden of showing that allowing withdrawal or amendment of the admissions would prejudice it. Albrecht did not offer any evidence that it would be prejudiced by allowing the Kastors to withdraw or amend the admissions.
>
> It is "a basic tenet of Ohio jurisprudence that **cases should be decided on their merits.**" *Perotti v. Ferguson* (1983), 7 Ohio St.3d 1, 3. The present case was only in the beginning phase when appellee filed its motion to deem admitted. Had the case been further along and prejudice demonstrated, denial of appellants' motion to withdraw or amend may have been in order. However, in this case appellants should have been allowed to withdraw or amend their admissions in order to allow the case to be decided on its merits.
>
> Given the facts above, this Court finds that **the trial court abused its discretion** when it deemed Albrecht's request for admissions admitted due to the Kastors' failure to timely respond. The Kastors' first and second assignments of error are sustained.

Albrecht, at ¶'s 18, 19, 20, 21, emphasis added.

V. DECISION

A. THE RESPONSES TO THE RFA'S WERE UNTIMELY[12], BUT BARELY

Recall the timeline of events relative to this matter:

July 14, 2020 – Wilson serves Robinholt with 150 RFA's

August 11, 2020 – Robinholt's responses to the RFA's are due

August 11, 2020 – Robinholt advises Wilson that due to some "logistical/technical complications" she needed "an additional couple of days" to serve the responses and that they, "would be forthcoming without unreasonable delay"

August 12, 2020 – Robinholt serves Wilson with her responses to the RFA's

August 14, 2020 – Robinholt serves Wilson with her First Supplement to the RFA's

January 20, 2021 – Under the impression that Wilson had taken the position that the RFA's were deemed admitted[13], Robinholt files a Motion to Amend the deemed admissions. Wilson responds in opposition

March 5, 2021 – Robinholt serves Wilson with her Second Supplement to the RFA's

April 26, 2021 – The Court files an Entry stating that any pending motion not granted is denied. Presumably, though not specifically, this includes Robinholt's motion to amend.

May 12, 2021 – Robinholt files a Motion for Clarification and Reconsideration regarding the Court's April 26, 2021 Order, relative to her motion to amend. The Court never ruled on this motion.

When considering the totality of the facts and circumstances surrounding Robinholt's handling of this matter, it is difficult to fathom what more she could have done to timely and properly respond to the RFA's, once she realized they were going to be tardy.

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[12] As discussed *infra,* they actually were not.

[13] Note also that Wilson never filed a motion to actually "deem" the responses "admitted." See: *Hess v. Satink, supra.*

First, on the 28th day (the day her responses were due), within rule she informed Wilson that there would be a delay in getting him her responses, advised him of the reason why (a logistical/technical complication), and informed him that they would be coming "forthwith."

Second, Robinholt served her responses to the RFA's on the 29th day, but less than twelve hours after they were due.

Third, Robinholt supplemented her responses twice and filed a motion to amend once it was clear to her that Wilson considered the RFA's deemed admitted, despite the fact that Wilson never formally moved the Court to deem them so.[14]

Under no reasonable evaluation of these facts can one conclude that Robinholt was dilatory, negligent, or intentionally obstructed discovery. While it is *technically* true that her responses were late (by a few hours), such an inflexible, adamantine application of the rule is hardly just given these facts.

THIS COURT NEVER *SPECIFICALLY* RULED UPON ROBINHOLT'S MOTION TO AMEND

As the Court noted above, Wilson goes to some effort to point out that Robinholt's motion " . . . marks the **fourth** time . . ." that she has brought this motion, all which were ". . . previously rejected by this Court."[15] This statement is not accurate.

The record reveals that the sole, single time this Court ever addressed Robinholt's motion to withdraw deemed admissions was in its Entry of April 26, 2021. In that general entry, the Court did not specifically address her motion at all. There was no discussion of it or reference to it, no legal analysis or evaluation as to its merit, and no specific order that addressed it.

The Entry reads, in pertinent part,

> All prior motions of both Plaintiff and Defendant not otherwise ruled granted, as indicated below, are hereby denied.

It appears to the Court, at least upon further rumination, that a motion this significant merited greater consideration and attention than it was given. This is particularly so as

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[14] This Court is aware that such a motion is not an actual prerequisite to deeming admissions admitted, but as noted *supra*, it is certainly the most common practice.

[15] See Page 1, Para. Two, of Wilson's Brief in Opposition.

Wilson's RFA's contain many requests that if admitted or deemed admitted, are dispositive to the entire action.

Surely this Court owed both parties a greater level of scrutiny and deliberation than it gave the issue in April, 2021.

Moreover, the other instances that Wilson posits the Court ruled on the motion are non-existent. For example, the second instance, Robinholt's motion for reconsideration, filed May 12, 2021, was never ruled upon. This Court is aware of the effect on a motion when it is not ruled upon and the disposition depends on whether or not the court enters a final judgment in a matter.

> When a trial court does not expressly rule upon a motion, it is deemed denied **when a court enters final judgment**. *Comisford v. Erie Ins. Property Cas. Co.*, 4th Dist. Gallia No. 10CA3, 2011-Ohio-1373, 2011 WL 1085147, ¶ 24 ("although the trial court did not explicitly rule on the request for a continuance, 'motions that a trial court fails to explicitly rule upon are deemed denied once a court enters final judgment.' "); *Wolford v. Sanchez*, 9th Dist. Lorain No. 05CA008674, 2005-Ohio-6992, 2005 WL 3556681, ¶ 41 ("motions not ruled upon are deemed denied").

Caterpillar v. Tatman, 4th Dist. Ross No. 18CA3646, 2019-Ohio-2110, at ¶ 26, emphasis added.

And,

> When a trial court disposes of a case, motions that have not been ruled upon are presumed to have been denied. *Pentaflex v. Express Serv., Inc.* (1998), 130 Ohio App.3d 209, 217.

Shepard v. Creager, 2nd Dist. Miami No. 2003 CA 35, 2005-Ohio-1717, at ¶ 22.

In this matter, the Court did not dispose of the case or issue a final judgment. The summary judgment Entry did not dispose of the case as most of Wilson's counterclaims remained pending. Thus, Robinholt's unruled motion for reconsideration was not "denied" and the presumption that it was is overcome.

Finally, as confirmed by the Ninth District, this Court did not rely upon or even consider the admissions, deemed or admitted, when granting Wilson summary judgment. As such, there was really only one instance that the Court (minimally) considered Robinholt's motion – the cursory Entry of April 26, 2021.

Such oversight is rectified herein.

CASES SHOULD BE DECIDED UPON THEIR MERITS

It is axiomatic that cases should, whenever possible, be decided upon the merits. Almost every case that addresses this issue mandates as much. The seminal case on the issue is, of course, *Cleveland Trust v. Willis,* 20 Ohio St. 3d 66 (1985). In *Cleveland Trust,* the high court said,

> Any matter admitted under Civ.R. 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Civ.R. 36(B). The court may permit the withdrawal if it will aid in presenting the merits of the case and the party who obtained the admission fails to satisfy the court that withdrawal will prejudice him in maintaining his action. *Balson v. Dodds* (1980), 62 Ohio St.2d 287, paragraph two of the syllabus. **This provision emphasizes the importance of having the action resolved on the merits**, while at the same time assuring each party that justified reliance on an admission in preparation for trial will not operate to his prejudice.

Cleveland Trust, at 67, emphasis added.

The Ninth District, like all appellate districts, has reiterated this maxim from *Albrecht* and its progeny to *Commodity Blenders* many times,

> Civ.R 36(B) emphasizes **the importance of having the action resolved on the merits**, while at the same time assuring each party that justified reliance on an admission in preparation for trial will not operate to his or her prejudice." *Nelson v. Tipton,* 10th Dist. Franklin No. 99AP–277, 1999 WL 1041154, *3 (Nov. 18, 1999), citing *Cleveland Trust Co.,* 20 Ohio St.3d at 67.

Commodity Blenders v. Van Wetzel, 9th Dist. Wayne No. 14AP0046, 2016-Ohio-7993, at ¶ 9, emphasis added.

This Court has carefully reviewed Wilson's RFA's and understands clearly why he is so adamant in defending the *status quo.* While the RFA's are in many instances irrelevant, demeaning, and inflammatory, many are dispositive of the entire case.

By way of example, RFA's number 16-33 establish count one of the counterclaim and many of the other RFA's establish the remaining counts. To deny Robinholt the ability to defend against the counterclaim based upon serving her responses to the RFA's less than one day late would be a travesty of justice and deliver to Wilson an unjustified windfall.

WILSON CANNOT DEMONSTRATE PREJUDICE BY ALLOWING ROBINHOLT TO WITHDRAW HER ADMISSIONS

As acknowledged by both parties, the Court may permit a party to withdraw or amend admissions when the party who obtained the admissions fails to demonstrate that withdrawal or amendment will prejudice the party. Civ.R. 36(B).

The thrust of Wilson's prejudice argument is that should the Court grant Robinholt's motion, he will be prejudiced by, ". . . having to incur costs and expenses to conduct additional discovery." And, that the administration of justice will be delayed " . . . even further . . ." Finally, he urges that the trial will be ". . . unnecessarily lengthened due to additional exhibits and witnesses necessary to prove Defendant's case."

None of these issues, even when taken *in toto,* demonstrate actual, colorable prejudice. First, all litigation involves costs and expenses. Wilson, a lawyer, and his counsel know this better than most and knew it when they counter-sued Robinholt. Moreover, the bulk of discovery is completed. While it is true that the Court will allow Wilson to conduct additional discovery if he wishes, whether or how much discovery to conduct is wholly in his control.

As for justice delayed, this argument rings hollow. Recall that Wilson filed a motion for reconsideration in the Ninth District, and at the status conference held on February 16, 2023, advised the Court and Robinholt that he may file a notice of appeal in the Ohio Supreme Court which, unlike the motion for reconsideration in the court of appeals, would in fact divest this Court of jurisdiction and cause the matter to be stayed.

In addition, the length of trial is hardly a prejudicial factor as, like discovery, the amount of evidence and witnesses called is within Wilson's discretion. Of course, Wilson would prefer to file for summary judgment based upon the admissions and avoid a trial all together, but this would thwart justice, especially given the factors cited above.

Moreover, this Court will grant leave to Wilson to re-open discovery and to file a renewed dispositive motion (but not Robinholt) should he wish, which will reduce any perceived prejudice to him.

Finally, and most importantly, Wilson's entire prejudice argument turns on the litigation process itself. There is no argument advanced by Wilson that he will be prejudiced *on the merits* if Robinholt's admissions are withdrawn. When considering prejudice to a party, the court primarily focuses on prejudice that could adversely affect a party's ability to present or defend their case on the merits. Under this analysis, the fact that a party might suffer some expense or inconvenience is of no accord.

THE TIME ROBINHOLT HAD IN WHICH TO REPLY WAS TOLLED

A final, but very compelling argument raised by Robinholt, yet curiously underdeveloped, is the tolling issue.

On March 27, 2020, five months before her responses to Wilson's RFA's were due, the Ohio Supreme Court issued an Administrative Actions Order, "In re Tolling of Time Requirements Imposed by Rules Promulgated by the Supreme Court and Use of

Technology." See: *03/27/2020 Administrative Actions,* 2020-Ohio-1166. ("The Tolling Order.")

The Tolling Order was in response to the COVID-19 pandemic and Executive Order 2020-01D wherein Governor DeWine declared a state of emergency in Ohio. In pertinent part, The Tolling Order reads,

> The time requirements imposed by the rules of the Court and set to expire during the term of this order **shall be tolled**.

The Tolling Order at Para. (D), emphasis added.

Clearly, Civ.R. 36 is a "rule of the Court." It contains (very specific) time requirements that if missed, can have devastating consequences.

The Supreme Court applied The Tolling Order retroactively, to the date of the emergency declaration, March 9, 2020, and designated it to expire on ". . . the date the period of emergency ends or July 30, 2020, whichever is sooner." The Tolling Order at Para. (A).

Ohio's state of emergency expired on June 18, 2021, by Executive Order 2021-O8D, signed by Governor DeWine. As such, The Tolling Order expired on July 30, 2020.

Assuming one does not count July 30, 2020, in the calculation[16], July 31, 2020, to August 12, 2020, is 13-days, which is, obviously, less than 28-days.

The gravamen of these dates is significant.

Recall that Wilson served his RFA's upon Robinholt on July 14, 2020, a timeframe in which The Tolling Order was in full force and effect. In other words, on the day that Wilson served his RFA's on Robinholt, the 28-day clock was not ticking. In fact, the 28-

[16] Civ.R. 6(A).

day clock did not start until The Tolling Order expired, July 30, 2020. Even using that date (not July 31, 2020) as the day the clock began to run still means that Robinholt had 14 days left (to August 26, 2020) to serve her responses. That she served them on August 12, 2020, by either metric means that they were timely.

FINAL THOUGHTS

This Court has carefully reviewed the parties' briefs, attachments, multiple correspondence, and the RFA's and responses. In his opposition brief, Wilson makes

some additional arguments that the Court did not directly address above. These issues, however, bear scrutiny because, at least in part, they paint an inaccurate picture of events not supported by the record.

ROBINHOLT'S ALLEGED DISCOVERY MISCONDUCT

In Wilson's brief in opposition, in the first paragraph, first sentence under "FACTS," he goes to great lengths to disparage Robinholt for numerous and sundry discovery violations. This jeremiad lasts for almost four full pages and recounts a myriad of discovery transactions occasioned by Robinholt.

This Court is at a loss to discern the purpose of this fulmination. First, even if the accusations are accurate – so what? What do other discovery issues (real or imagined) have to do with this issue? The facts and procedural history of the RFA's issue are not in dispute, but posit a legal issue for resolution. Robinholt's conduct on other, unrelated matters is of no account for the determination at hand.

NO JUSTIFICATION FOR THE DELAY[17]

On Page 7, second paragraph of his brief in opposition, Wilson begins,

> "Besides her discovery misconduct, Robinholt still did not provide the Court any justification for her failure to timely answer or her unnecessary delay in filing her motion to withdraw."

This statement is patently inaccurate.

On Page 2, in the first full paragraph of Robinholt's motion, she describes in detail the process she and her counsel engaged in to respond to Wilson's RFA's. She then writes,

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[17] As determined by the tolling issue, there was really no "delay" to begin with.

> "Additionally, Plaintiff's undersigned counsel **encountered problems with a corrupted video file** that Plaintiff intended to produce in response to Defendant's production requests, **which made it impossible to serve Plaintiff's production responses** . . ." (Emphasis added.)

Moreover, in the email Robinholt sent to Wilson on August 11, 2020, she notes,

> "**Due to some logistical/technical complications**, I will need an additional couple days to serve my client's discovery responses." (Emphasis added.)

As such, not only did Robinholt inform the Court of the reason for the delay (if there actually was one), she informed Wilson on the day the responses were due of the issues she was having.

THERE IS NO REQUIREMENT THAT ROBINHOLT DEMONSTRATE "EXCUSABLE NEGLECT"

This argument raised by Wilson is even more befuddling. Also on Page 7 of his brief, Wilson argues that Robinholt should not be granted leave to withdraw or amend admissions without showing,

> "the failure to act was the result of excusable neglect."

This new, inapposite legal requirement, apparently drafted out of whole cloth, is not to be found in Civ.R. 36, which has only two requirements that must be demonstrated to withdraw or amend admissions: 1) that the merits of the action will be subserved unless leave to amend or withdraw is granted; and 2) that withdrawal or amendment will not prejudice the party in favor of the admissions.

There is no requirement in the Civil Rules, or any controlling case law, that grafts this new "excusable neglect" requirement into the calculus. There is apparently, one outlier common pleas court case from Medina that creates interstitial law by judicially adding this requirement, *Outdoor Prod. v. The Deck Connection,* Medina County Court of Common Pleas, 104 Misc. 2d 19, Case No. 99 CIV 0380 (1999).

While this Court certainly respects the decisions of its sister Common Pleas Courts, this decision is of no authoritative or persuasive value.

Finally, even if "excusable neglect" was an element that Robinholt must demonstrate in order to receive the relief she seeks, her explanation that she was having difficulty with a corrupted video file suffices as excusable neglect. This is particularly so given that

Robinholt advised Wilson of this issue in-rule and provided her responses less than 12 hours later.

ROBINHOLT DID NOT "DELAY" IN ADDRESSING HER RESPONSES TO WILSON'S RFA'S

Wilson's final argument that merits consideration begins on Page 8 of his brief. Here, he argues that Robinholt's "six-month" delay in filing her motion to withdraw was "unnecessary and excessive."

I disagree.

While it is true that Robinholt filed her motion to amend on January 20, 2021, about five months (not six months) after the RFA's were ostensibly due, she hardly "delayed" in addressing the issue.

Recall that on the day the responses were due, Robinholt sent Wilson an email explaining why they would be late and promising to have the responses forthwith. She then did in fact provide the responses the very next day, and supplemented those responses three days later. Operating under the assumption that the time to respond was extended due to The Tolling Order, and as Wilson never filed a motion to deem the admissions admitted, it is totally understandable that Robinholt would not feel compelled to immediately file a motion to amend, and only filed the motion when she believed the issue was ripe.

VI. CONCLUSION

For the forgoing reasons, and primarily because the Plaintiff did timely reply to the requests for admissions (and if she did not, the delay was *de* minimis), and the Defendant cannot demonstrate prejudice, the motion should be granted. More importantly yet, this case should be decided on the merits.

The motion for reconsideration is well-taken and hereby GRANTED. Plaintiff's admissions previously deemed admitted are hereby withdrawn and her (three) responses are deemed timely filed.

JUDGE D. CHRIS COOK