

IN THE COURT OF COMMON PLEAS
MEDINA COUNTY, OHIO

COMMON PLEAS COURT
2015 AUG 31 P 2:18

MED EXPRESS, INC.

Plaintiff,

vs.

AMY NICHOLS, et al.

Defendants.

) CASE NO.: 13CIV0351
) 13CIV0352

) JUDGE COLLIER

) MAGISTRATE LEAVER

) MAGISTRATE'S DECISION WITH
) INSTRUCTIONS FOR SERVICE

FILED
DAVID B WADSWORTH
MEDINA COUNTY
CLERK OF COURTS

This matter came on for oral evidentiary hearing on April 21, 2015 on the Defendants' motion for an award of sanctions pursuant to R.C. 2323.51 and Civil Rule 11. A representative of the Plaintiff, Richard Radey, was present with Attorney Richard Cardenas. Attorneys Levy, Nye and Haren appeared for the Defendants. Following the presentation of evidence and testimony, the Court requested the parties submit post-trial closing arguments with proposed findings of facts and conclusions of law. On July 1, 2015, the Defendants submitted their briefs as well as proposed finding of facts and conclusions of law. On July 6, 2015, counsel for the Plaintiff filed a motion to withdraw from the representation of the Plaintiff citing irreconcilable differences with the client. The Court granted counsel's motion to withdraw on July 9, 2015. No new counsel has appeared for the Plaintiff. The Plaintiff is presently unrepresented. The Plaintiff did not submit any post-trial briefs. The Magistrate hereby issues the following Magistrate's Decision:

MOTIONS AND EVIDENTIARY RULINGS

Defendants' Exhibits 1, 2, 3, 4, 5 and 6 are admitted by stipulation of the parties.

Defendants' Exhibits 7, 8, 9, 10, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 31, 32, 33, 35, 36, 40, 43, 44, 45, 46 and 47 are admitted without objection.

Defendants' Exhibits 12, 37, 38, 39, 40, 41 and 42 are admitted over the objections of the Plaintiff.

Plaintiff's Exhibits 1 through 6 are admitted by stipulation of the parties.

Upon consideration of the evidence presented, the Magistrate finds as follows:

FINDINGS OF FACT

1. On March 25, 2013, the Plaintiff, Med Express, Inc. commenced suit against Defendant Amy Nichols and EBay, Inc. The verified complaint was as follows:

Plaintiff Med Express Inc., for its Verified Complaint against Defendants Amy Nicholls and Ebay, Inc. states as follows:

1. Med Express Inc. ("Med Express") is an Ohio corporation which is and has at all times material to this Complaint been doing business in Medina County, Ohio.
2. Defendant Amy Nicholls ("Nicholls") is, upon information and belief, an individual who resides in Greenville, South Carolina., who transacted business with Med Express in Medina County, Ohio. Her Ebay username is chimera-studios.
3. Defendant Ebay, Inc. ("Ebay") is, upon information and belief, a Delaware corporation licensed to do business in the State of Ohio as a foreign corporation, and doing business in Medina County, Ohio.
4. Med Express is engaged in the business of selling used medical equipment that has been repaired, refurbished and rebuilt on Ebay.com, a website that is owned, operated and maintained by Ebay.

5. On or about February 12, 2013, Nicholls purchased an Olympus G92104 Microscope Light Source with Shutter Attachment from Med Express in Ebay transaction No. 230849885366. As part of the transaction, Nicholls agreed to pay shipping costs in the amount of \$12.00 in addition to the purchase price of the item, which was \$175.00.

6. On February 12, 2013, Nicholls paid for the item and shipping via Pay Pal. Promptly after receiving Nicholls' payment, Med Express took the equipment to the Valley City post office, where it was weighed and shipped to Nicholls. Med Express paid the full amount of the shipping cost, but for some reason unknown to Med Express, the equipment was received by Nicholls with \$1.44 postage due.

7. When notified of the problem, Med Express immediately offered to reimburse Nicholls for the postage due amount. Despite this offer, and before giving Med Express a chance to reimburse her, Nicholls on February 26, 2013, apparently as a result of the \$1.44 postage due, posted negative feedback and comments for the transaction on Ebay's website and gave Med Express low ratings in the Detailed Seller Ratings section of Ebay's Feedback Forum, resulting in an unfavorable feedback profile for Med Express. In so doing, Nicholls falsely and deliberately slandered the good name and reputation of Med Express.

8. Nicholls, by posting the negative feedback and comments and low dealer ratings on Ebay's website, has caused Med Express to incur damages including, but not limited to, the loss of income and revenue

which has irreparably harmed Med Express and caused Med Express to lose customers and income, and to incur additional charges from Ebay, for which it may recover damages from Nicholls.

WHEREFORE, Plaintiff Med Express Inc. demands judgment against Defendants Amy Nicholls and Ebay, Inc. as follows:

1. For temporary, preliminary and permanent injunctive relief requiring Nicholls and Ebay to remove the negative feedback, comments and review from Ebay's website;
2. For damages against Nicholls in the amount to be determined at trial necessary to compensate Med Express for the losses it has and will suffer as a result of Nicholls' conduct;
3. Because Nicholls' conduct was intentional and malicious, for an award of reasonable attorney fees and punitive damages; and
4. For the Plaintiff's costs and expenses herein and for such other and further relief as the Court deems necessary or appropriate.

2. The complaint also contained a notarized Verification signed by Richard A. Radey, the President of Plaintiff Med Express, Inc.

3. The Plaintiff also filed a motion for a temporary restraining order with the complaint. The motion also contained the affidavit of Richard A. Radey.

4. Mr. Radey's affidavit attached to the motion for a temporary restraining order, states, in relevant part:

Due to a dispute over \$1.44 in excess postage charges, and rather than accepting my full offer for a full reimbursement of the postage due cost, Defendant Amy Nichols

falsely posted false and slanderous statements on the website owned by Ebay, Inc., in the form of negative feedback on the transaction and low ratings in Ebay's Detailed Seller Ratings section.

As a result of the false and libelous statement, Plaintiff has suffered damages and will continue to suffer damages into the future unless said comments, posts, feedback and ratings are removed from the website owned, operated and maintained by Defendant Ebay, Inc.

5. On the same day, Med Express initiated a second lawsuit against Defendants Dennis Rogan and Ebay, Inc. The second verified complaint was as follows:

Plaintiff Med Express Inc., for its Verified Complaint against Defendants Dennis Rogan and Ebay, Inc. states as follows:

1. Med Express Inc. ("Med Express") is an Ohio corporation which is and has at all times material to this Complaint been doing business in Medina County, Ohio.

2. Defendant Dennis Rogan ("Rogan") is, upon information and belief, an individual who resides in West Pittson, Pennsylvania, who transacted business with Med Express in Medina County, Ohio. Rogan's Ebay username is rogielog646.

3. Defendant Ebay, Inc. ("Ebay") is, upon information and belief, a Delaware corporation licensed to do business in the State of Ohio as a foreign corporation, and doing business in Medina County, Ohio.

4. Med Express is engaged in the business of selling used medical equipment that has been repaired, refurbished and rebuilt on Ebay.com, a website that is owned, operated and maintained by Ebay.

5. On or about December 8, 2012, Rogan purchased a Pyrex 10 ml. Graduated Cylinder No. 3046-10 Double Pack from Med Express in Ebay transaction No. 330660664519.

6. After Rogan sent payment for the item, one of the two cylinders was inadvertently broken during handling.

7. Despite Med Express furnishing Rogan with a full refund, Rogan on January 24, 2013, posted neutral feedback and negative comments on Ebay's website, and low dealer ratings in Ebay's Seller Ratings section. In so doing, Rogan has falsely and deliberately slandered the good name and reputation of Med Express.

8. Rogan, by posting the neutral feedback and comments and the low dealer ratings, has caused Med Express to incur damages including, but not limited to, the loss of income and revenue which has irreparably harmed Med Express and caused Med Express to lose customers and income, and to incur additional charges from Ebay, for which it may recover damages from Rogan.

WHEREFORE, Plaintiff Med Express Inc. demands judgment against Defendants Dennis Rogan and Ebay, Inc. as follows:

1. For temporary, preliminary and permanent injunctive relief requiring Rogan and Ebay to remove the negative feedback, comments and review from Ebay's website;
2. For damages against Rogan in the amount to be determined at trial necessary to compensate Med Express for Rogan's conduct;
3. Because Rogan's conduct was intentional and malicious, for an award of reasonable attorney fees and punitive damages; and
4. For the Plaintiff's costs and expenses herein and for such other and further relief as the Court deems necessary or appropriate.

6. The complaint also contained a notarized Verification signed by Richard A. Radey, the President of Plaintiff Med Express, Inc.

7. Again, the Plaintiff also filed a motion for a temporary restraining order with the complaint. The motion again contained the affidavit of Richard A. Radey.

8. Mr. Radey's affidavit attached to the motion for a temporary restraining order, states, in relevant part:

Despite receiving a prompt and full refund on the transaction, Defendant Dennis Rogan falsely posted false and slanderous statements on the website owned by Ebay, Inc., in the form of neutral feedback, negative comments and low dealer ratings in Ebay's Detailed Seller Ratings section.

As a result of the false and libelous statement, Plaintiff has suffered damages and will continue to suffer damages into the future unless said comments, posts,

feedback and ratings are removed from the website owned, operated and maintained by Defendant Ebay, Inc.

9. On March 28, 2013, the Court denied the motions for a temporary restraining order in both cases.

10. On April 18, 2013, the complaints in both cases were voluntarily dismissed.

11. On April 18, 2013, Attorneys Nye and Haren entered appearances for both Defendants. Unaware the complaints had been voluntarily dismissed, answers and counterclaims were filed on behalf of both Defendants. Ebay never filed an answer in either case.

12. On April 22, 2013, the Defendants' filed a motion to consolidate the cases.

13. On May 20, 2013, the Defendants filed a motion for an award of sanctions pursuant to R.C. 2323.51 and Civil Rule 11. The Defendants sought an award of legal fees and expenses in the amount of \$10,163.15.

14. On May 28, 2013, Attorney Paul Levy of Washington, D.C. sought admission *pro hac vice* on behalf of the Defendants.

15. On May 29, 2013, the Court consolidated the two cases.

16. On May 29, 2013, the Plaintiff filed a reply to the counterclaims.

17. On May 29, 2013, the Court granted the motion of Attorney Levy to appear *pro hac vice*.

18. On July 15, 2013, the Court issued an order vacating the previous consolidation of the cases. The Court also found no counterclaims were pending as the counterclaims were filed after the cases were voluntarily dismissed. The two pending motions for sanctions were scheduled for oral hearing on September 26, 2013.

19. The sanctions hearing was subsequently re-scheduled to November 14, 2013.

20. On November 7, 2013, Attorney Bruce Hall entered an appearance on behalf of the Plaintiff and requested the hearing scheduled for November 14, 2013 be continued.

21. The hearing was re-scheduled to January 23, 2014.

22. The matter proceeded to hearing before Judge Collier on January 23, 2014.

23. The Defendants' testimony was submitted by affidavit. The Defendants also offered the expert testimony of Attorney Karen Lefton. Ms. Lefton testified as an expert regarding the amount of time and labor required to defend defamation/First Amendment cases. Ms. Lefton opined the attorney fees requested were reasonable and necessary. Richard Radey, the sole shareholder and President of Plaintiff Med Express, Inc. (hereafter Med Express) testified on behalf of the Plaintiff. Med Express sells 95% of its product through Ebay. After each sale, a purchaser has the option of leaving feedback regarding the transaction.

24. A purchaser can rate a transaction as positive, neutral or negative. Secondly, the purchaser has the option to leave a comment about their experience. Lastly, the purchaser can rate the transaction by leaving feedback ratings in four separate categories. These detailed seller ratings allow a purchaser to rate the categories from 1 (worst) to 5 (best).

25. Mr. Rady testified Med Express was rated a "Top Rated Seller Plus" by Ebay. As a result, Med Express pays lower fees to Ebay. Low ratings in Ebay's detailed seller ratings categories can cause Ebay to change a seller's status, consequently costing a seller more to do business through Ebay.

26. Mr. Rady testified he was sitting at his computer when he became aware through his Ebay seller's dashboard that Defendant Nicholls left a comment as well as a negative rating regarding a purchase she made from Med Express. The comment said "something to the nature of: Package arrived with postage due with no previous communication from seller". T. 143.

27. Mr. Rady then testified: "At that moment 1's appeared, the lowest rating possible on all of my—all of those categories."

28. Counsel further prompted Mr. Rady by asking, " So as you sit here today, you remember those ratings were from Ms. Nicholls---is that right?"

29. Mr. Rady testified "Yes", and again stated all the categories were rated 1's.

30. Mr. Rady then testified in detail as to why the rating of 1 by Defendant Nicholls in all four categories was inaccurate.

31. Mr. Rady then testified about the transaction with Defendant Rogan. After Defendant Rogan ordered and paid for a beaker, the beaker was discovered to have been broken. Consequently, Med Express could not complete the sale and refunded Defendant Rogan's payment.

32. Mr. Rady testified Defendant Rogan left neutral feedback regarding the transaction with Ebay. Mr. Rady also testified "He left me all 1's" on the detailed seller rating categories.

33. Attorney Hall concluded his direct examination of Mr. Rady by asking "So if I understand your testimony, you're saying that what both of them marked was factually inaccurate; is that correct?" Mr. Rady responded "Yes."

34. Following the hearing, on February 4, 2014, the Defendants filed a "motion to reopen the record in connection with motion for an award of sanctions."

35. The Defendants asserted the testimony of Mr. Rady was false. Specifically, neither of the Defendants rated Med Express with all 1's as Rady testified, and more importantly, Mr. Rady could not have even seen the detailed seller ratings as they are not available to be viewed by a seller.

36. On November 7, 2014, Counsel for the Defendants took the deposition of Rebekah Long, an Ebay representative, in Draper, Utah. Ms. Long's testimony revealed that Mr. Rady's prior testimony regarding seeing the Defendants rate him with all 1's on Ebay's detailed seller rating page was false. She testified detailed seller ratings are anonymous and the seller cannot view the ratings. Furthermore, the ratings left by Defendants Rogan and Nicholls were not all 1's. Ebay's records indicate Defendant Nicholls detailed seller ratings were as follows:

5, 1, (unreadable), and 3.

37. The deposition of Ms. Long shows that Mr. Rady's testimony was false.

38. Before the Court rendered a decision on the Defendants' motion for sanctions, the parties reached an agreement. The agreement was placed on the record on March 27, 2014.

39. On May 14, 2014, Attorney Hall filed a motion to withdraw from representation of the Plaintiff. The motion was granted.

40. On May 20, 2014, the Defendants filed a motion to enforce the settlement agreement.

41. On May 22, 2014, Attorney Kevin Susman filed a notice of appearance on behalf of the Plaintiff. Then on November 10, 2014 Attorney Ricardo Cardenas entered his appearance on behalf of the Plaintiff.

42. The motion to enforce the settlement agreement came on for hearing before the undersigned Magistrate on November 20, 2014. The Plaintiff was represented by Attorney Cardenas at the hearing.

43. On December 3, 2014, the undersigned Magistrate issued a Decision finding there was no enforceable agreement between the parties. The Defendants' motion to enforce the settlement agreement was denied. No objections were filed and the Court adopted the

Magistrate's Decision on December 19, 2014. The Defendants' original motion for sanctions was rescheduled for oral evidentiary hearing on April 2, 2015.

44. The matter proceeded to oral evidentiary hearing before the undersigned Magistrate on April 2, 2015 as scheduled. Much of the same evidence and testimony presented mirrored the first hearing before Judge Collier. Ms. Lefton again testified as an expert regarding the amount of time and labor required to defend defamation/First Amendment cases. Ms. Lefton again opined the attorney fees requested were reasonable and necessary. Attorneys Levy, Nye and Haren testified as to their efforts in the case. The deposition of an Ebay representative was also presented.

45. Mr. Radey also testified again. His testimony varied from the first hearing in that he attempted to clarify his prior trial testimony wherein he testified he saw the Defendants Nicholls and Rogan rated him with all 1's in the detailed seller ratings categories. This time he testified he must have jumped to the conclusion Nicholls and Rogan rated him with all 1's (as opposed to his prior testimony that he basically watched it happen almost live). Mr. Radey also testified he called Ebay years ago and Ebay gave him the idea to file suit against Ebay and buyers leaving negative feedback. The negative feedback could be removed by court order. The testimony wasn't credible.

46. Following the hearing, the parties were to submit written closings arguments with proposed findings of fact and conclusions of law. The Defendants timely complied.

47. On June 17, 2015, the Defendants withdrew their motion for sanctions as to Attorney James Amodio only.

48. The Plaintiff's post-trial brief was due on July 31, 2015.

49. On July 6, 2015, Attorney Cardenas filed a motion to withdraw from representation of the Plaintiff. The motion was granted.

50. No attorney has since entered a notice of appearance for the Plaintiff. The Plaintiff is unrepresented and has not submitted a post-trial brief.

51. The Defendants filed a motion for default award of sanctions based on the Plaintiff's failure to appear through counsel.

CONCLUSIONS OF LAW

1. The underlying cause of action set forth in the Plaintiff's complaint and motion for injunctive relief against both Defendants is defamation. The conduct of the Defendants which the Plaintiff asserted rose to the level of defamation is as follows:

Defendant Nicholls participated in all three components of Ebay's feedback system. She rated the transaction with the Plaintiff "Negative" and then left a comment stating "Order arrived with postage due with no communication from seller beforehand." In the detailed seller rating component she rated the transaction as follows:

How accurate was the item description? 5

How satisfied were you with the seller's communication? 1

How quickly did the seller ship the items? Illegible –appears to be a 3 or 5

How reasonable were the shipping and handling charges? 3

Defendant Rogan also participated in all three components of Ebay's feedback system. He rated the transaction "Neutral" and then left a comment stating "Order retracted." In the detailed seller rating component he rated the transaction as follows:

How accurate was the item description ? Not rated

How satisfied were you with the seller's communication? Not rated

How quickly did the seller ship the items? Not rated

How reasonable were the shipping and handling charges? 5

2. The tort of defamation is a false publication that injures a person's reputation. To prevail, a plaintiff must prove all of the following five elements: (1) a false and defamatory statement; (2) about the plaintiff; (3) published without privilege to a third party; (4) with fault of at least negligence on the part of the defendant; and (5) that was either defamatory per-se or caused special harm to the plaintiff.

3. Section 11, Article I of the Ohio Constitution provides in relevant part: Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press.

4. Opinion speech is protected speech that is never actionable as defamation. When determining whether a statement is fact or opinion, a court is to consider the specific language used, whether the statement is verifiable, the general context of the statement, and the context in which the statement appeared. An objective "ordinary reader" test is to be applied to determine whether a statement is a false statement of fact. The court must determine whether a reasonable reader would view the words to be language that normally conveys information of a factual nature or opinion. If the language is factual in nature, a truthful statement cannot be defamation because an element of defamation is a false defamatory statement.

5. The feedback generated by Nicholls and Rogan is part opinion and part statement of fact. Clearly, rating your satisfaction with either a negative, neutral or positive ranking would not be perceived by any rational reader to be anything but the buyer's opinion. The statement is not

verifiable and appears in a forum specifically designed to publish the buyers' opinions of the transaction. The same analysis applies to the detailed seller ratings.

6. An argument could be made the narrative statements left by Defendants Nicholls and Rogan were intended to be statement of facts even though they appear in a forum designed to elicit opinions. Nevertheless, these statements could not have been the basis of a defamation action because the statements are undeniably true and Mr. Rady had no objective reason whatsoever to question their veracity when he caused the complaints to be filed.

7. The Plaintiff's complaints had no merit, legally or factually, when they were filed.

8. R.C 2323.51(A)(2) defines frivolous conduct, in relevant part, as follows:

(a) Conduct of an inmate or other party to a civil action, of an inmate who has filed an appeal of the type described in division (A)(1)(b) of this section, or of the inmate's or other party's counsel of record 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.

9. A violation of any one of the above sections is frivolous conduct. The Plaintiff has violated all four sections.

10. The Plaintiff's suit was for an improper purpose. The goal was to thwart Ebay's seller ranking system for financial gain by obtaining an injunction against out of state defendants, unlikely to be able to defend themselves. The Defendants did absolutely nothing wrong. They simply participated in Ebay's feedback component in exactly the manner in which Ebay intended. While Mr. Rady may perceive Ebay's seller ranking system to be unfair to sellers, the remedy wasn't to attack the buyers.

11. The Plaintiff's complaint was not warranted under existing law, could not have been supported by a good faith argument for an extension, modification, or reversal of existing law, and could not be supported by a good faith argument for the establishment of new law. The Defendants did nothing more than accurately recite a statement of facts and express their opinion. Mr. Rady had absolutely no knowledge or evidence to the contrary.

12. The Plaintiff's conduct consisted of allegations or other factual contentions that had no evidentiary support or, if specifically so identified, were not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Again, Mr. Rady had no objective evidence suggesting the statements of fact made by the Defendants were not true. Furthermore, the Plaintiff misrepresented the matter in the pleadings and to the court.

13. The Magistrate finds the Plaintiff's complaints and motions set forth factual contentions that the Plaintiff knew or should have known were not warranted by the evidence.

14. R.C. 2323.51 allows a party adversely affected by frivolous conduct to recover an award of court costs, reasonable attorney fees, and other reasonable expenses incurred in connection with the civil action.

15. The Defendants have moved the Court for an award of reasonable attorney fees and expenses. The Magistrate finds the Defendants are entitled to an award of attorney fees and expenses pursuant to R.C. 2323.51.

16. Counsel for the Defendants have requested an award of attorney fees in the amount of \$32,405.39 and expenses of \$2,804.00.

17. Attorney Haren's fees are \$17,248.39 at an hourly rate of \$175.00 per hour. Attorney Nye's fees are \$15,157.00 at an hourly rate of \$230.00. That breaks down to a total of 164.46 hours spent on this case.

18. Attorney Levy, a nationally recognized First Amendment litigator from the public interest firm Public Citizen Litigation Group located in Washington, DC, participated completely pro-bono and is not seeking any award of fees.

19. Rule 1.5(A) of the Ohio Rules of Professional Conduct sets forth the factors to be considered when determining the reasonableness of an attorney fee request. The factors are:

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 the ability of the lawyer or lawyers performing the services; and
8. whether the fee is fixed or contingent.

20. The Defendants argue they were able to minimize the amount of time they spent on this litigation because of the pro bono assistance of Attorney Levy. The Magistrate found Attorney Levy to be an experienced, skilled and competent litigator. Attorney Levy could have easily handled this matter himself. The Court recognizes Attorney Levy was required to associate himself with an Ohio lawyer to be admitted *pro hac vice*. But the novelty and difficulty of the questions involved did not require three lawyers to obtain the result in this case.

21. The Magistrate has conducted many attorney fee hearings and is familiar with fees customarily charged in Medina County for similar legal services. A reasonable rate for a skilled litigator in Medina County is \$200.00 per hour.

22. The Magistrate finds the Defendants are entitled to an award of attorney fees in the amount of \$16,446.00 (total hours of 164.46 x ½ x \$200.00) plus expenses of \$2,804.00, for a total award of \$19,250.00 against Med Express, Inc.

23. Having awarded fees pursuant to R.C. 2323.51, it is unnecessary to address sanctions pursuant to Civil Rule 11.

24. The Plaintiff participated throughout the entire hearing. Failing to submit a brief and presently being unrepresented (and therefore unable to appear without counsel) is not the equivalent of failing to plead or defend. The Defendants' motion for a default award of sanctions is denied.

25. Court costs shall be assessed to the Plaintiff.


JAMES R. LEAVER
MAGISTRATE

No party shall assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b).

The Clerk of Courts is instructed to serve this Decision on the below listed attorneys or parties:

Med Express, Inc.
Atty. Amodio
Atty. Haren
Atty. Levy
Atty. Nye

Copies of this Order were mailed by the Clerk of Courts on 8-31-15.

Christy Simmons
Deputy Clerk of Court