

IN THE FIFTH DISTRICT COURT OF APPEALS  
DELAWARE COUNTY, OHIO

JOHN DOE 1, et al.,	)	CASE NO: 23 CAE 04 0028
	)	
Plaintiffs-Appellees,	)	
	)	On Appeal from the Delaware
vs.	)	County Court of Common Pleas
	)	CASE NO: 23-cv-H-02-0089
CITY OF COLUMBUS, et al.,	)	
	)	
Defendants-Appellants.	)	
	)	

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COURT OF APPEALS

PLAINTIFFS-APPELLEES’ MEMORANDUM CONTRA OF DEFENDANTS-  
APPELLANTS’ MOTION FOR LEAVE TO MANUALLY FILE FLASH DRIVE

I. Introduction

On April 25, 2023, after all allowable briefing, and a preliminary injunction hearing on February 21, 2023, the Delaware County Court of Common Pleas (1) granted Appellees’ 2/24/23 Motion Seeking Leave to Proceed Pseudonymously, (2) denied Appellants’ 2/21/23 and 3/24/23 motions to dismiss the case or transfer venue, and (3) granted Appellees’ 2/16/23 and 3/17/23 motions for a preliminary injunction. Appellants have now appealed the court’s judgment entry.

On May 22, 2023, Appellees filed a motion to dismiss the appeal for lack of a final appealable order. On June 1, 2023, Appellants filed their memorandum contra and a motion seeking leave to manually file a flash drive in support of their memorandum contra. The flash drive “contains video evidence dated January 27, 2027 [sic]” (the “Video”) from an unrelated case. The Video was never submitted to the trial court.

II. Law and Argument: This Court may not consider extraneous evidence.

“Ohio law is clear that [an appellate court] must limit [its] review on appeal to the record before the court at the time of judgment: ‘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.’” *Baker v. Senior Emergency Home Repair EOPA*, 6th Dist. Lucas No. L-14-1203,

2015-Ohio-3083, 2015 WL 4600521, ¶ 11, quoting *State v. Ishmail*, 54 Ohio St.2d 402, 377 N.E.2d 500 (1978), paragraph one of the syllabus; accord *Fravel v. Columbus Rehab. & Subacute Inst.*, 2016-Ohio-5807, 70 N.E.3d 1161, ¶ 14 (10th Dist.); *Morgan v. Eads*, 104 Ohio St.3d 142, 2004-Ohio-6110, 818 N.E.2d 1157, ¶ 13. This Court “cannot consider any exhibits attached to the parties’ briefs that were not made part of the trial court’s record.” *Salpietro v. Salpietro*, 2023-Ohio-169, ¶ 9, 205 N.E.3d 1203, 1210, citing *Star Mgt., LLC v. Fayne*, 6th Dist. Lucas No. L-12-1342, 2014-Ohio-2319, 2014 WL 2480618, ¶ 7.

Appellants acknowledge that the Video was not before the trial court when it determined the preliminary injunction. Appellants sole “justification” is that the video was not “public until after the preliminary injunction hearing \* \* \* .” One may infer from this wording that Appellants had the Video at that time but chose to not submit it to the court. Further, Appellants fail to disclose that the Video was publicly available as early as April 12, 2023,<sup>1</sup> a month before the trial court ruled on the preliminary injunction. Appellants never sought post-hearing leave to submit the Video into evidence prior to the trial court’s ruling on the preliminary injunction motion.

Finally, not only is it improper for Appellants to file extraneous evidence with this Court, but the Video is irrelevant to the specific legal issue in this case—whether the city’s firearms storage provision is barred by R.C. 9.68.

**III. Conclusion**

Appellees respectfully request that this Court deny Appellants’ motion to file extraneous evidence with this Court.

<sup>1</sup> E.g., WBMS, *Video shows child fire gun found in couch; father charged*, <https://www.wane.com/top-stories/video-shows-child-fire-gun-found-in-couch-father-charged/> (April 12, 2023).

Respectfully submitted,

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CERTIFICATE OF SERVICE

This will certify that a true and accurate copy of the foregoing Plaintiffs-Appellees’ Memorandum Contra has been served via e-mail this 8th day of June 2023 upon the following counsel:

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