

IN THE COURT OF CLAIMS OF OHIO

2013 APR -1 PM 3: 10

LYNDSEY HOWELL

Plaintiffs

v.

OHIO UNIVERSITY POLICE  
DEPARTMENT

Defendants

CASE NO. 2013-00001

MAGISTRATE HOLLY T. SHAVER

**ORIGINAL**

**DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE FRIVOLOUS PLEADINGS**

Defendant Ohio University respectfully asks this Court to deny Plaintiff's Motion to Strike Frivolous Pleadings because the proposed Answer for which the Defendant sought leave to file is in accordance with the Civil Rules.

Plaintiff Lyndsey Howell asserts that the Answer for which the Defendant sought leave to file violates Civ.R. 11 on the basis that it denies some of the allegations of her Complaint. In essence, she asserts that this Court must presume all of her allegations to be true and sanction the University on that basis. But that would require this Court to decide the facts based on allegations alone, and the Civil Rules simply do not support such a conclusion.

In particular, Ms. Howell asserts that the University had no basis to deny the allegations of ¶¶ 6, 16 and 17 of her Complaint, while demanding that this Court assume all her allegations to be true. In ¶ 6 of her Complaint she asserts that the University's officer acted "in a grossly negligent manner." The University is certainly within its rights to deny that allegation, and is permitted to deny generally the allegations of a paragraph that includes multiple parts and asserts gross negligence as to each. Civ.R. 8. Likewise, all of the injuries catalogued by Ms. Howell in ¶ 16 of the Complaint are alleged to have been the proximate result of the University's negligence.

**ON COMPUTER**

In ¶ 17 she alleges that the University's officer failed to follow proper procedure, essentially alleging negligence. If Ms. Howell's position is to be accorded validity, then a Defendant would simply be required to admit negligence. But that is not the case.

The University notes that it did admit many of the allegations of the Complaint in its Answer, although Civ.R. 8 would have permitted a general denial. Thus the University has not acted frivolously in denying simply every allegation. Instead, the University has denied that it acted negligently and denied that Ms. Howell's injuries were proximately caused by the University. The University's understanding of the facts is different from Ms. Howell's, but the Civil Rules provide a mechanism for this Court to sort out the facts by trial or other means. The facts are not presumed based simply on the allegations of the Complaint, and therefore Ms. Howell's Motion to Strike cannot be granted.

Accordingly, the University asks this Court to deny the Motion to Strike and grant it leave to file the Answer.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On April 1, 2013, a copy of this document was served via regular mail on the following:

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