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Motion in Limine to Exclude Plaintiff's Proposed Exhibits (#31, 32, 38...)

William D. Mason
Cuyahoga County Prosecutor

A. Steven Dever
Cuyahoga County Assistant Prosecutor

Dean Boland
Cuyahoga County Assistant Prosecutor

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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

1999 DEC 22 11 3 59
RONALD E. FLEERS
CLERK OF COURTS
CUYAHOGA COUNTY

ALAN J. DAVIS, Special Administrator
of the Estate of
SAMUEL H. SHEPPARD

Plaintiff

vs.

THE STATE OF OHIO

Defendant

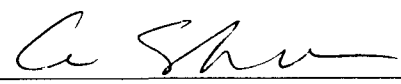
Judge Ronald Suster

Case No. 312322

MOTION IN LIMINE TO
EXCLUDE PLAINTIFF'S
PROPOSED EXHIBITS
(EVID. R. 801)

Defendant, State of Ohio, by and through counsel, William D. Mason,
Prosecuting Attorney for Cuyahoga County, Assistant Prosecutor A. Steven Dever, and
Assistant Prosecutor Dean Boland, moves this Honorable Court to exclude Plaintiff's
proposed Exhibits numbered: 31, 32, 38, 40, 41, 42, 43, 44, 45, 46, 49, 77, 78, 79, 80,
91, 92, 93, 112, and 113 for the reasons set forth fully in the following brief.

Respectfully Submitted,
William D. Mason
Prosecuting Attorney
Cuyahoga County



A. Steven Dever (0024982)
Dean Boland (0065693)
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-5870
Attorneys for Defendant

BRIEF

Facts and Introduction

The current Plaintiff's Exhibit List contains numerous affidavits as proposed exhibits. Those affidavit exhibits are numbered on the current Plaintiff's Exhibit List as follows: 31, 32, 38, 40, 41, 42, 43, 44, 45, 46, 49, 77, 78, 79, 80, 91, 92, 93, 112, and 113.

Law & Argument

Hearsay is defined as a "statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Evid. R. 801(C). Evid. R. 802 states that "[h]earsay is not admissible except as otherwise provided by the Constitution of the United States, by the Constitution of Ohio, any statute enacted by the General Assembly. . . by these rules, or by other rules proscribed by the Supreme Court of Ohio." There are approximately twenty-three exceptions to the Evid. R. 802, and none of these exceptions apply to the use of affidavits as evidence. See Evid. R. 803; Evid. R. 804.

The Ohio Supreme Court has held that affidavits are generally not admissible as evidence at trial because affidavits are hearsay evidence. See National City Bank of Cleveland v. National City Window Cleaning Co., 174 Ohio St. 510 (1963); see also Faye Gardens Mobile Home Park v. Newman, 14 Ohio App. 3d 144 (Ohio App. 12 Dist 1983)(affidavit of attorney detailing time spent on client's case is hearsay and not admissible to establish the reasonableness of attorney's fees); Mahall v. Conway, Cuyahoga County App. No. 48297, unreported (8th Dist. 1985. An affidavit's use at trial as evidence violates the hearsay rule because an adverse party has the right to be

confronted by the witnesses against him. National City Bank, 174 Ohio St. at 516. The use of an affidavit as evidence is specifically prohibited by the language of Evid. R. 801(C), and case law interpreting that rule. Therefore, an affidavit is not admissible under Evid. R. 802. Plaintiff's proposed exhibits 31, 32, 38, 40, 41, 42, 43, 44, 45, 46, 49, 77, 78, 79, 80, 91, 92, 93, 112, and 113 are not admissible under Evid. R. 802.

Conclusions

For the reasons above, the State of Ohio respectfully requests the court exclude plaintiff's exhibits 31, 32, 38, 40, 41, 42, 43, 44, 45, 46, 49, 77, 78, 79, 80, 91, 92, 93, 112, and 113 from this trial.

Respectfully Submitted,
William D. Mason
Prosecuting Attorney
Cuyahoga County



A. Steven Dever (0024982)
Dean Boland (0065693)
Cuyahoga County Prosecutor's Office
1200 Ontario St.
Cleveland, Ohio 44113
(216) 443-5870
Attorneys for Defendant

CERTIFICATE OF SERVICE

The foregoing Motion to Exclude Plaintiff's Exhibits was served upon plaintiff's counsel Terry Gilbert at 1370 Ontario Street, 17th Floor, Cleveland, Ohio 44113 this 22 day of December, 1999 by regular U.S. Mail.

