

IN THE COURT OF APPEALS  
TWELFTH APPELLATE DISTRICT OF OHIO  
WARREN COUNTY

JANE DOE, et al.,	:	
Plaintiffs-Appellees,	:	CASE NO. CA2011-03-022
- vs -	:	<u>OPINION</u>
	:	12/30/2011
GARY GEORGE,	:	
Defendant-Appellant.	:	

CIVIL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS  
Case No. 2009 CV 75259

Kircher, Arnold & Dame, LLC, Konrad Kircher, 4824 Socialville-Foster Road, Mason, Ohio 45040, for plaintiffs-appellees

Lawrence A. Wilkins and Thomas M. Kollin, 2661 Commons Boulevard, Beavercreek, Ohio 45431, for defendant-appellant

**HENDRICKSON, P.J.**

{¶1} Defendant-appellant, Gary George, appeals a judgment of the Warren County Court of Common Pleas awarding \$3,575,000 in damages to plaintiffs-appellees, Jane and John Doe and their daughter Jenny Doe (the victim).

{¶2} On August 8, 2009, appellant pled guilty to charges stemming from allegations he sexually abused the victim for several years when she was a child. Following his plea,

appellant was immediately sentenced to two years in prison. On September 8, 2009, appellees filed a civil complaint against appellant seeking compensatory and punitive damages for the sexual abuse. On March 11, 2010, the trial court held a pretrial conference; the case was scheduled for trial for January 10-12, 2011. Appellees' counsel took the deposition of appellant on July 19, 2010.

{¶3} On January 6, 2011, three business days before the trial, appellant moved to continue the trial or, in the alternative, to convey him from prison to attend the trial.<sup>1</sup> The trial court denied the motion. On January 10, 2011, a jury awarded \$500,000 in compensatory damages to the victim, \$75,000 in compensatory damages to John Doe, and \$3,000,000 in punitive damages. This appeal follows.

{¶4} In a single assignment of error, appellant challenges the trial court's refusal to have him conveyed from prison to attend the trial. Specifically, appellant asserts that since he is a "material witness and the only individual who could refute any facts offered by appellees," his presence at trial was crucial and the trial court abused its discretion by not allowing him to attend the trial. We disagree.

{¶5} "There is no support in the Constitution or in judicial precedent for the proposition that a prisoner has an absolute due process right to attend the trial of a civil action to which he is a party." *In re S.F.T.*, Butler App. Nos. CA2010-02-043, CA2010-02-044, CA2010-02-045, and CA2010-02-046, 2010-Ohio-3706, ¶8; *Abuhilwa v. Board*, Pickaway App. No. 08CA3, 2008-Ohio-5326. In addition, the United States Supreme Court has declined to extend to prisoners the Fourteenth Amendment due process right of physical access to the courts. *Trammell v. Powell*, Montgomery App. No. 23832, 2011-Ohio-2978, ¶6.

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1. According to the parties' briefs, the trial court held a final pretrial conference on December 20, 2010, three weeks before the trial. The parties allege that during the conference, appellant orally moved to continue the trial until his release from prison on August 8, 2011, or in the alternative, to convey him from prison to attend the trial. The trial court allegedly denied the motion. There is no reference in the record as to appellant's oral motion or the trial court's denial of it.

The decision whether or not to allow an incarcerated party to be present is within the sound discretion of the trial court. Id.

{¶6} Appellant asserts his presence at trial was crucial as he was a "material witness and the only individual who could refute any facts offered by appellees." Further, because "only appellant had personal knowledge of the facts, \* \* \* his direct testimony could have been utilized to defend against appellees' allegations." Such declarations overlook the fact that appellant pled guilty to the sexual abuse. It is well-established that a guilty plea "is a complete admission of the defendant's guilt." Crim.R. 11(B)(1); *State v. Fuller*, Butler App. No. CA2008-09-240, 2009-Ohio-5068, ¶105 (by entering a guilty plea, a defendant does not simply state he did the acts described in the indictment, he is also admitting guilt of a substantive crime). By pleading guilty, appellant admitted he had sexually abused the victim. As a result, the ultimate and only issue at trial was the amount of damages to be awarded to appellees. Appellant does not specify what testimony he would have offered at trial on that issue.

{¶7} Further, although his motion to be present at trial was denied, appellant took no steps to present his testimony by an alternate method. Even though appellant's deposition was taken six months before the trial, appellant never moved to present his testimony by deposition. In fact, his deposition was never mentioned at trial. Appellant asserts his deposition testimony would not have been effective as the jury could not have evaluated his demeanor. However, nothing prevented appellant from requesting that his deposition be videotaped. Appellant also took no steps to present his testimony by other alternate methods such as by an affidavit.

{¶8} In light of the foregoing, and given the exceedingly late filing of appellant's written motion, and the fact he was represented at trial, we find that the trial court did not abuse its discretion in denying his motion to convey him from prison to attend the civil trial.

His assignment of error is accordingly overruled.

{¶9} Judgment affirmed.

RINGLAND and PIPER, JJ., concur.