# CAPTION: OLTHAUS V. NIESEN

**05-22-24**

APPEAL NOS.: C-230513

C-230515

TRIAL NO.: A-2002596

KEY WORDS: SANCTIONS — EXCUSABLE NEGLECT — FRIVOLOUS CONDUCT — R.C. 2323.51 — EVIDENTIARY HEARING — ABUSE OF DISCRETION — RELEVANCE

SUMMARY:

 Where plaintiff filed a motion requesting leave to file a response out of time the day after defendants filed a motion to grant their motion for sanctions as unopposed, and where plaintiff’s counsel was out of town and encountered confusion regarding submitting the response, the trial court did not abuse its discretion by granting plaintiff leave to file the answer out of time.

 Where plaintiff and his counsel did not address binding precedent or argue for a modification of or exception to such precedent throughout litigation on both the merits and defendants’ joint motion for sanctions, the trial court erred in declining to award sanctions pursuant to R.C. 2323.51(A)(2)(a)(ii) because no reasonable attorney would have proceeded on a legal theory unwarranted in existing law without advocating for some modification of or exception to the doctrine.

 Where the record contains undisputed evidence of the social media posts and conduct at issue, the trial court did not err in declining to award sanctions under R.C. 2323.51(A)(2)(a)(iii) because plaintiff did not present factual allegations that lacked evidentiary support.

 Where defendant failed to raise a claim for sanctions pursuant to R.C. 2323.51(A)(2)(a)(i) below, he waived the right to raise the argument on appeal.

 Where defendants attempted to call plaintiff’s attorneys as witnesses during the R.C. 2323.51(B)(2) hearing on the sanctions motion, the trial court did not err in denying defendants’ request where the testimony was not relevant to the objective inquiry of R.C. 2323.51.

JUDGMENT: AFFIRMED IN PART, REVERSED IN PART, AND CAUSE REMANDED

JUDGES: OPINION by BERGERON, J.; BOCK, P.J., and CROUSE, J., CONCUR.