

COURT & JUSTICE

## Newburgh Heights mayor's defamation lawsuit against Cleveland TV station over critical story can proceed, judge rules

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By **Cory Shaffer, cleveland.com**, [CShaffer@cleveland.com](mailto:CShaffer@cleveland.com)



Trevor  
Elkins

CLEVELAND, Ohio -- A Cuyahoga County judge refused to throw out a defamation and libel lawsuit filed by Newburgh Heights Mayor Trevor Elkins and village council members against WEWS Channel 5, its parent media company and reporter Jonathan Walsh.

Common Pleas Court Judge Kelly Ann Gallagher rejected a request from lawyers representing Scripps Media to dismiss the complaint that stems from a November story that called a city program to bill some drivers and the insurance companies for the cost of responding to car crashes a "government-sanctioned scam."

The ruling, filed Tuesday afternoon, means the suit can move forward to discovery. The two sides are set for a November telephone conference.

Monica Dias, a lawyer for the station, argued in the motion to dismiss that the lawsuit strikes at the heart of the First Amendment's freedoms of speech and press, and represents an attempt by Elkins and council to stifle public discourse and censor media coverage.

"What this case is about is whether the news media and the general public can criticize their government over government policies," Dias told cleveland.com Wednesday. "The plaintiffs with this lawsuit say 'no,' and that if you say that, you're defaming elected officials."

The Nov. 2 story is titled "[How a government-sanctioned scam in Newburgh Heights has taken thousands of dollars from drivers.](#)"

The piece included claims that Elkins and Newburgh Heights bill drivers for calling the police after an accident, that the village runs a widespread "scam" that sends "official-looking bills" to some drivers without telling them the city will not actually seek to enforce payment if they don't pay.

The piece, which was labeled with on-screen graphics as an "exclusive investigation," also cited instances where a woman who drove herself to the police station after being rear-ended was billed more than \$400 for a police report she never got, and the city billed an insurance company after police could not determine who was at fault.

Elkins, along with council members Dorene Kray, Steven Moran, Brian Schaffran and Robert Schippling, sued the TV station that same month, claiming Walsh and the TV station knew the program targeted drivers who were found negligent or at-fault in crashes, and sought to recoup costs that the drivers were "legally responsible for" in an effort to protect Newburgh Heights taxpayers from footing the bill.

The lawsuit says the report's claims that the city billed drivers just for calling the cops were false, and that Walsh used the terms "scam" and "scheme" throughout the piece painted Elkins and council as "crooks and stooges" who were part of a criminal enterprise and unfit for office.

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The suit also accused Walsh of reporting the story at the behest of Elkins' political adversaries, because at the time he was making an unsuccessful bid against Cuyahoga County Councilwoman Shontel Brown to lead the county Democratic party.

The station stands behind the piece, which remains on its website.

Lawyers for the station argued that Walsh included explanations from Elkins in the piece, and that, when taken as a whole, the piece "signaled to a reasonable viewer that the statements were "expressions of opinion about governmental billing practices."

Attorney Peter Pattakos, who is representing Elkins and council, latched onto the station's attempt to recast the claims in the piece as opinion "after the fact."

"The right of a free press to investigate and criticize the government is a bedrock of democracy," Pattakos said fortunately for the public -- who has an interest in truthful journalism and healthy public discourse -- the law do grant a free pass to defame people who serve as public officials by publishing knowingly false statements that public officials did something nefarious that they did not actually do."

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