No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DOUGLAS BRUCE, an individual,
Petitioner,

v.

CITY OF MIAMISBURG, OHIO,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether under existing due process law, the statute of limitations on a Section 1983 claim for the unconstitutional deprivation of private property can begin to run when the plaintiff has no actual notice that the municipality has taken his real property?

And further, is a real property owner under an affirmative obligation to visit his property on a regular basis to ensure that a municipality has not taken his property without notice?

And finally, should this Court adopt a standard nationwide statute of limitations for Section 1983 claims?

LIST OF PARTIES

1. Douglas Bruce, Petitioner.
2. City of Miamisburg, Ohio, Respondent.

CORPORATE DISCLOSURE

Mr. Bruce is an individual and there is no corporate entity or ownership to disclose per Rule 29.6.

RELATED PROCEEDINGS

1. *Bruce v. City of Miamisburg, Ohio, et al.*, Case No. 3:21-cv-90 (S.D. Ohio) (final judgment entered January 13, 2023).
2. *Bruce v. City of Miamisburg, Ohio*, Case No. 23-3080 (6th Circuit) (order denying petition for rehearing en banc entered November 15, 2023).

TABLE OF CONTENTS

Appendices

TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

Opinions Below

The unpublished opinion of the Sixth Circuit Opinion below is *Bruce v. City of Miamisburg, Ohio,* Case No. 23-3080, issued October 11, 2023, available at 2023 U.S. App. LEXIS 27217, 2023 WL 6623194 (6th Cir. Oct. 11, 2023). The citation to the District Court Order below is *Bruce v. City of Miamisburg, Ohio*, Case No. 3:21-cv-90, issued January 13, 2023, available at 2023 U.S. Dist. LEXIS 7232, 2023 WL 184010.

Jurisdiction

This civil rights action was filed by Mr. Bruce pursuant to 42 U.S.C. § 1983 and the Fifth, Eighth, and Fourteenth Amendment of the United States Constitution. Accordingly, the District Court had subject matter jurisdiction pursuant to 28 U.S.C. § 1331, when it entered the final judgment being appealed. The United States Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The United States Court of Appeals for the Sixth Circuit decided Mr. Bruce's appeal on October 11, 2023. Mr. Bruce timely filed a Petition for Rehearing En Banc on October 25, 2023. The Sixth Circuit denied Mr. Bruce's Petition for Rehearing En Banc on November 15, 2023.

This Petition is timely filed as it is filed within 90 days of the denial of Mr. Bruce's Petition for Rehearing En Banc. *See* US Supreme Ct. R. 13.1, 13.3.

Relevant Constitutional Provisions

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

The question presented for the Court is whether under existing due process law, the statute of limitations on a Section 1983 claim for the unconstitutional deprivation of private property can begin to run when the plaintiff has no notice that the municipality has taken his property? Specifically, in this case, Mr. Bruce was an out of state property owner of two different parcels of real estate, each holding a five-plex apartment building (the "Properties"). Without actual notice to Mr. Bruce, the City of Miamisburg, Ohio ("Miamisburg"), demolished the buildings due to alleged code violations, took ownership of the Properties through its administrative procedures, and sold the Properties to a third party. The Court of Appeals, stipulating for the purposes of the appeal that Mr. Bruce did not receive the notices mailed by Miamisburg (which the evidence demonstrates were returned to Miamisburg as undeliverable), nonetheless held that Mr. Bruce's lawsuit was untimely because he was under an affirmative obligation to visit the Properties himself or hire an agent to do so on a regular basis. This holding flips the notice requirement for government action on its head. Indeed, the "fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked." *Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 246 (1944). Thus, the Court should grant this Petition and the Sixth Circuit Court of Appeals should be reversed.

1. Procedural History.

This case was filed on March 5, 2021. It proceeded through discovery, at the conclusion of which Miamisburg filed a Motion for Summary Judgment arguing, inter alia, that the statute of limitations had run on Mr. Bruce's Section 1983 claims because more than two years[1] had passed since the demolition of his buildings. The District Court agreed, and entered an order granting the summary judgment motion and final judgment on January 13, 2023. Mr. Bruce timely filed his Notice of Appeal on January 27, 2023. The parties briefed the issues before the Sixth Circuit, which issued an unpublished opinion upholding the District Court's decision on October 11, 2023. Mr. Bruce filed a Petition for Rehearing En Banc on October 25, 2023, which was denied on November 15, 2023.

2. Brief Facts.

Mr. Bruce was the owner of two different parcels of real estate located in Miamisburg City in Montgomery County, Ohio, with the street addresses of 609 Cherry Hill Drive and 621 Cherry Hill Drive, Miamisburg, Ohio 45342 (the "Properties"). Mr. Bruce purchased the Properties in or about 2013 for approximately $200,000.00. A five-plex apartment building (all two-bedroom units) had been built on each of the Properties, prior to the City of Miamisburg's ("Miamisburg") illegal demolition of the buildings. Without proper notice to Mr. Bruce,

[1] The statute of limitations for a Section 1983 claim in Ohio is two years. *See Beaver St. Invs. v. Summit Cnty.*, 65 F.4th 822, 826 (6th Cir. 2023).

Miamisburg demolished both of the buildings on the Properties, thereby destroying any reasonable economic value or use of the Properties.

At the time the Complaint was filed, Mr. Bruce alleged upon information and belief that Miamisburg demolished the buildings due to fines which Miamisburg had issued regarding the maintenance of the yards on the Properties (i.e., mow the lawn). During the summary judgment phase, Miamisburg claimed that the basis for the destruction of the buildings was that they had become public nuisances.

Regardless of the basis for their demolition, Mr. Bruce never received actual notice that Miamisburg intended to demolish the buildings. In its statement of facts for the Motion for Summary Judgment, Miamisburg lists the following efforts to notify Mr. Bruce of the impending demolition:

• *September 1, 2017, notifying Plaintiff that 609 Cherry Hill Drive is unsound for human occupancy, and a Notice of Demolition will be posted on the structure;*
• *September 12, 2017, notifying Plaintiff that the Properties are unsound for human occupancy, and Notices of Demolition will be posted on the structures; and*
• *Miamisburg posted the same notices on the buildings located on the Properties. Still receiving no response, Miamisburg purchased two separate advertisements from the Miami Valley Newspapers, which publishes area weekly newspapers including The Miamisburg News, Germantown Press, Centerville Dispatch, Franklin Chronicle, and the Springboro Star Press, which ran twice in successive weeks from September 21*

to September 28, 2017, and then again twice in successive weeks from April 19 to April 26, 2018.

Upon examination, the evidence submitted by Miamisburg of its purported "notice" to Mr. Bruce demonstrated that Mr. Bruce never actually received these notices. With regard to the September 1, 2017 and September 12, 2017 notices, each of them reflects that they were never actually received by Mr. Bruce. None of the certified mailings was signed by Mr. Bruce, and all were returned to Miamisburg. With regard to the posting of the notices on the Buildings, plainly Mr. Bruce, who resides in Colorado Springs, Colorado, did not see those postings and was never notified through that means as it is undisputed that he never visited the buildings. With regard to the publication of notices in small, local newspapers, there is no evidence that those newspapers are circulated in the Colorado Springs, Colorado-area, where Miamisburg knew that Mr. Bruce resided. A piece of paper on a building 800 miles away from where Mr. Bruce resides, or publication in a newspaper that Miamisburg knows Mr. Bruce has no opportunity to read, is no notice at all.

According to Miamisburg, the buildings were demolished on or about July 20, 2018. Mr. Bruce filed the Complaint on March 5, 2021. Thus, the district court held that Mr. Bruce's claims were barred by the statute of limitations unless he did not know, or did not have reason to know, of the demolition of the buildings before March 5, 2019 (eight months after the buildings' demolition).

Notwithstanding the factual record, which demonstrates that Mr. Bruce never received actual, or even constructive, notice of Miamisburg's intention to demolish the Buildings, the District Court ruled that

Mr. Bruce "should have discovered the threat of demolition upon his property" by having an agent visit the properties, at which point that agent would have theoretically noticed the demolition notices posted on the Properties. The District Court also held "it is not reasonable for Bruce to have gone at least eight months without realizing two of his buildings were no longer in existence," and therefore the statute of limitations had expired by the time he filed the Complaint.

The Court of Appeals agreed, holding:

> We set to one side all the notices that the City sent to Bruce at a post-office box address that Bruce himself testified that he had used daily for 36 years; perhaps a jury could believe that these particular notices somehow did not reach him there. For suffice it to say that by March 2019, as the district court rightly observed, a reasonable property owner—one who made any effort at all to stay apprised of his buildings' condition, for example, and to ensure that they remained in compliance with the municipal code—would have known that, for the past six months or so, his buildings had lain in heaps of rubble. Bruce's suit was therefore untimely, and the district court was right to grant summary judgment.

Bruce v. City of Miamisburg, Ohio at 2-3, Case No. 3:21-cv-90, available at 2023 U.S. Dist. LEXIS 7232, 2023 WL 184010 (6th Cir. Jan. 13, 2023).

Reasons for Granting the Writ

1. The Sixth Circuit Court of Appeals Has Impermissibly Placed the Burden for Notice of Government Action on a Citizen.

Under Rule 10, a Writ of Certiorari may be granted if "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." US Supreme Ct. R. 10(c).

Notice has been described as "the first essential of due process of law." *Connally v. General Constr. Co.*, 269 U.S. 385, 391 (1926). As previously stated by this Court, "To put it as plainly as possible, the State may not finally destroy a property interest without first giving the putative owner an opportunity to present his claim of entitlement." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982). The Sixth Circuit has acknowledged this law, itself recognizing that "however weighty the governmental interest may be in a given case, the amount of process required can never be reduced to zero—that is, the government is never relieved of its duty to provide *some* notice and *some* opportunity to be heard prior to final deprivation of a property interest.'" *Hicks v. Comm'r of Soc. Sec.*, 909 F.3d 786, 799, (6th Cir. 2018) (quoting *Propert v. District of Columbia*, 948 F.2d 1327, 1332 (D.C. Cir. 1991)).

Additionally, "when notice is a person's due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably

adopt to accomplish it." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (1950). In *Jones v. Flowers*, a United States Supreme Court case that concerned the loss of a piece of real estate just like this case, this Court stated:

> By the same token, when a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so. This is especially true when, as here, the subject matter of the letter concerns such an important and irreversible prospect as the loss of a house. Although the State may have made a reasonable calculation of how to reach Jones, it had good reason to suspect when the notice was returned that Jones was "no better off than if the notice had never been sent." Malone, 614 A.2d, at 37. Deciding to take no further action is not what someone "desirous of actually informing" Jones would do; such a person would take further reasonable steps if any were available.

Jones v. Flowers, 547 U.S. 220, 230 (2006). This Court made this holding in *Jones* where the government action at issue, the transfer of ownership, could possibly be undone, even though it was referred to as an "irreversible prospect." In a situation where a potential victim of government overreach faces the permanent demolition of a building, which cannot be undone, the requirement that a property owner receive actual notice of the government's intended action must be even more strictly enforced. The minor burden of requiring actual notice to a known and identifiable property owner that the owner is at risk of losing their entire property and investment is

greatly outweighed by the potential loss that the property owner will suffer if the city essentially proceeds *in absentia*. Indeed, the cost to hire a process server to personally serve Mr. Bruce with notice that Miamisburg intended to demolish his buildings would have cost less than the city spent on the methods by which it chose to "notify" Mr. Bruce of the impending demolition.

The steps taken by Miamisburg demonstrate that it was not "desirous" of informing Mr. Bruce of the impending demolition. Rather, it posted notices on a building 800 miles away from Mr. Bruce's residence and ran advertisements in publications it knew that Mr. Bruce had no reasonable opportunity to review. While this Court has approved notification or service by publication "in the case of persons missing or unknown . . . ." *Mullane*, 339 U.S. at 173, Mr. Bruce was not a missing or unknown person. Miamisburg knew Mr. Bruce's address. Instead of hiring a process server to serve Mr. Bruce with actual notice at his residence of its intention to demolish the buildings, the city chose the two methods of "notice" least likely to inform Mr. Bruce of the planned demolition. Because the city failed to act in a manner demonstrating that it was "desirous" of informing Mr. Bruce of the pending proceedings, but instead acted with unclean hands by using methods of notification that it knew would not actually notify Mr. Bruce of its intended course of conduct, the statute of limitations "clock" never began ticking.

The Sixth Circuit's holding that Mr. Bruce was under an affirmative obligation to visit his properties so that he could learn they were demolished by Miamisburg after the fact turns the long held due process principles of notice and an opportunity to be heard on their head. It places the onus on the

individual property owner, not the government, to inform himself that the government has taken action to deprive him of his constitutionally protected property. The Sixth Circuit's decision creates a duty that every property owner ought to have an agent drive by his property regularly, just in case a local official determines a building should be demolished and fails to provide adequate notice to the property owner. That is not the law anywhere in the United States - it is indisputable that anyone may own an empty building. The law created by the Sixth Circuit reverses the way due process of law has worked for hundreds of years.

The statute of limitations for enforcing a federal civil right cannot be based on such arbitrary and undefined practices. There is simply no such obligation on property owners. This is not a firm foundation for protecting private property under the United States Constitution.

On the contrary, Miamisburg had a legal duty to provide notice to Mr. Bruce of its intended course of action and a fundamentally fair process for him to challenge it. Instead, Miamisburg wasted money on posting a notice 800 miles from Mr. Bruce's residence of 35 years (which was known to Miamisburg), and placed a classified advertisement in a local newspaper it knew Mr. Bruce would never read. The city did not call Mr. Bruce or email him, nor expend a small sum to serve Mr. Bruce with notice and a court date prior to demolition. Miamisburg's goal was punitive, not informative, and contrary to its legal obligations. *See Jones v. Flowers*, 547 U.S. 220, 230 (2006) (quoted above). The city wished to demolish the buildings with the least amount of resistance possible, without actual notice to the owner, and that process now has the

approval and imprimatur of the Sixth Circuit Court of Appeals.

The policy created by the Sixth Circuit will discourage a municipality from making a good faith attempt to actually notify property owners of the government's intentions to demolish buildings or take property. It will encourage the municipalities throughout the Nation to use de minimis efforts like those used in this case, such as postal mail that gets returned, posting a notice that will never be seen, or publication in a small local circular the property owner will never read. It does not adequately protect the constitutional rights of property owners in the United States.

As was stated 130 years ago by the this Court, "in any society the fulness and sufficiency of the securities which surround the individual in the use and enjoyment of his property constitute one of the most certain tests of the character and value of the government." *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 324 (1893). The Panel Decision is inconsistent with these long-held principles. The illegal demolition of a building, without notice to the owner, is not made legal by the passage of time. Rather, the statute of limitation should begin to run once the municipality has actually notified the owner of the impending or actual demolition, and this is what is required under the due process protections contained within the Fifth and Fourteenth Amendments. As such, this Court should reverse the decision of the Sixth Circuit to confirm that citizens have the right to own an empty building without having to station a sentinel at the doors.

II. This Court Should Create a Uniform Statute of Limitations for Section 1983 Claims.

This Court should use this case as an opportunity to revisit the judicial policy of applying state statutes of limitations to Section 1983 actions. *See, e.g., Wilson v. Garcia*, 471 U.S. 261, 275-77 (1985). Instead of placing the statutes of limitations for constitutional rights at the whim of state law, which can vary from state to state, this Court should establish a uniform statute of limitations for all Section 1983 litigation so that all citizen's rights are equally protected. The rights of property owners, and all victims of unconstitutional actions by municipalities, local governments, and state governments, should be uniform across the Nation.

As this Court noted in *Wilson*,

> The Constitution's command is that all "persons" shall be accorded the full privileges of citizenship; no person shall be deprived of life, liberty, or property without due process of law or be denied the equal protection of the laws.

Wilson, 471 U.S. at 277. Nonetheless, the Court continued in *Wilson*, and its progeny, to affirm a rule that makes the constitutional rights of citizens unequal based on the state where the citizen resides, or a constitutional violation occurs.

The "expiration date" (i.e., statute of limitations) of a constitutional claim should not depend on whether the violation transpired in California, or Colorado, or Ohio, or any other state.

The only way to ensure that all citizens receive equal protection of the laws is to apply a uniform statute of limitations to all Section 1983 actions, regardless of where the constitutional injury was sustained.

CONCLUSION

For the foregoing reasons, Mr. Bruce respectfully requests that this Court issue a writ of certiorari to review the judgment of the Sixth Circuit Court of Appeals.

DATED this 9th day of February, 2024.

Respectfully submitted,

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APPENDIX 1

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOUGLAS BRUCE, an individual

Plaintiff—Appellant

v.

CITY OF MIAMISBURG, OHIO,

Defendant—Appellee

Appeal from the United States District Court
For the Southern District of Ohio
No. 23-3080

Before **KETHLEDGE, THAPAR, and MATHIS**, Circuit Judges

KETHLEDGE, Circuit Judge.

Douglas Bruce sued the City of Miamisburg for demolishing, as public nuisances, two buildings that Bruce had bought but never maintained. The district court granted summary judgment to the City on limitations grounds. We affirm.

We view the evidence in the light most favorable to Bruce. *See Troche v. Crabtree*, 814 F.3d 795, 798 (6th Cir. 2016). Bruce lives in Colorado Springs and owns about 50 properties in nine states. In 2013, he purchased two buildings in Miamisburg, Ohio, located at 609 and 621 Cherry Hill Drive. Yet he never visited these buildings or hired anyone to maintain them. Over the next few years, the City attempted to send any number of notices to Bruce about the buildings' condition: that their lawns were unmowed, that trash and debris surrounded them, that the buildings had become public nuisances, and eventually that the buildings had been condemned.

In September 2017, the City mailed to Bruce's post-office box in Colorado Springs two notices of the City's intention to demolish the buildings. Those notices were returned as undeliverable, even though Bruce checked that post-office box daily and had used that address for receiving notices regarding his properties for some 36 years. (The City also sent notices of the demolition to Bruce at a Colorado state prison, but apparently he had been released by then.) The City also posted notices of the impending demolition on the building's front doors, and repeatedly published such notices in five local newspapers between September 2017 and April 2018. Yet the City never heard a word from Bruce; and by July 2018 the City had demolished the buildings.

The first time the City did hear from Bruce, apparently, is when he filed this lawsuit, in March 2021, more than two years after the buildings' demolition. Although § 1983 does not specify a limitations period—it borrows them from state law—the parties here agree that the applicable limitations period was two years. *See Beaver St. Invs. v. Summit Cnty.*, 65 F.4th 822, 826 (6th Cir. 2023). That period began to run when Bruce knew or had "reason to know of the injury which is the basis of his action." *Id.* "A plaintiff has reason to know of his injury when he should have discovered it through the exercise of reasonable diligence." *Johnson v. Memphis Light Gas & Water Div.*, 777 F.3d 838, 843 (6th Cir. 2015) (internal quotation marks omitted).

Bruce's suit was timely, therefore, only if he had no reason to know by March 2019 that his buildings had been demolished. We set to one side all the notices that the City sent to Bruce at a post-office box address that Bruce himself testified that he had

used daily for 36 years; perhaps a jury could believe that these particular notices somehow did not reach him there. For suffice it to say that by March 2019, as the district court rightly observed, a reasonable property owner—one who made any effort at all to stay apprised of his buildings' condition, for example, and to ensure that they remained in compliance with the municipal code—would have known that, for the past six months or so, his buildings had lain in heaps of rubble. Bruce's suit was therefore untimely, and the district court was right to grant summary judgment.

The district court's judgment is affirmed.

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOUGLAS BRUCE, an individual

Plaintiff—Appellant

v.

CITY OF MIAMISBURG, OHIO,

Defendant—Appellee

Appeal from the United States District Court
For the Southern District of Ohio at Dayton.
No. 23-3080

Before **KETHLEDGE, THAPAR, and MATHIS**, Circuit Judges

JUDGMENT

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

FILED, United States Court of Appeals, Sixth Circuit, October 11, 2023.

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DOUGLAS BRUCE, an individual

Plaintiff—Appellant

v.

CITY OF MIAMISBURG, OHIO,

Defendant—Appellee

Appeal from the United States District Court
For the Southern District of Ohio at Dayton.
No. 23-3080

Before **KETHLEDGE, THAPAR, and MATHIS**, Circuit Judges

ORDER

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Kelly L. Stephens
Kelly L. Stephens, Clerk

FILED United States Court of Appeals, Sixth Circuit, November 15, 2023.

APPENDIX 4

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

DOUGLAS BRUCE, an individual,

Plaintiff,

v.

CITY OF MIAMISBURG, OHIO, et al.

Defendants

Case No. 3:21-cv-80
Judge Thomas M. Rose

ENTRY AND ORDER GRANTING DEFENDANT CITY OF MIAMISBURG'S MOTION FOR SUMMARY JUDGMENT (DOC. NO. 48)

Presently before the Court is Defendant City of Miamisburg's Motion for Summary Judgment ("Motion"). The City of Miamisburg ("Miamisburg") seeks summary judgment on Plaintiff Douglas Bruce's ("Bruce") claims of deprivation of property, violation of due process, and violation of the Eighth and Fourteenth Amendments related to the fining and demolition of his properties at 609 and 621 Cherry Hill Drive in Miamisburg, Ohio.

The Court GRANTS Defendant's Motion for Summary Judgment and terminates the case.

I. BACKGROUND

Bruce purchased the properties at 609 and 621 Cherry Hill Drive (the "properties") at a public auction in 2013 for approximately $153,000. (Doc. No. 47 at PageID 352.) Bruce has been a property owner for

approximately 46 years and owns 50 properties across the county. (*Id.* at PageID 353-54, 382-83, 425.) The properties at issue were initially placed in the name of Helen Collins ("Collins"). (Doc. No. 47-20.) Collins' sole role was to forward notices to Bruce. (Doc. No. 47 at PageID 465.) In June 2016, at Bruce's request, Collins signed a quitclaim deed turning the property over to Bruce. (Doc. No. 47-19.)

During the several years he owned the properties, Bruce did not hire a property manager or contract with any companies to maintain the properties. (Doc. No. 47 at PageID 354-57.) Neither Bruce or Collins stepped foot on the properties during their ownership and no tenant ever rented a unit at the properties. (*Id.* at PageID 352-53, 359, 383-85.) Consequently, over the course of Bruce and Collins' ownership, the properties were cited multiple times for failing to mow the grass or secure trash and debris on the properties. (Doc. No. 48-1 at PageID 856-882, 905-912.) The properties were ultimately declared a public nuisance and unfit for human occupation. (*Id.* at PageID 883-893, 896-904, 913-951.) Along with these notices, Miamisburg issued a number of invoices for maintenance on the properties. (Doc. No. 48-1 at PageID 953-71.) Between 2013 and 2017, Miamisburg issued the following notices:

- May 2, 2013, Violation Warning Notice for lack of mowing at the Properties (*Id.* at PageID 856-59, 864-66);
- June 20, 2013, Violation Notice for lack of mowing at the Properties (*Id.* at PageID 860-63);
- October 30, 2013, Violation Warning Notice for trash and debris surrounding the property, including the dumpster and shed at 621 Cherry Hill Drive (*Id.* at PageID 867-74);

• May 9, 2014, Violation Notice for lack of mowing at the Properties (*Id.* at PageID 875-82);

• March 30, 2015, Violation Notice declaring the Properties public nuisances (*Id.* at PageID 883-893, 896-904);

• October 22, 2015, Violation Notice for improperly secured large trash collection facilities at the Properties (*Id.* at PageID 905-12);

• December 6, 2016, Violation Notice declaring the Properties public nuisances (*Id.* at PageID 913-47);

• April 25, 2017, Violation Notice for lack of mowing at 609 Cherry Hill Drive (*Id.* at PageID 948-51);

• September 1, 2017, notifying Plaintiff that 609 Cherry Hill Drive is unsound for human occupancy and that a Notice of Demolition will be posted on the structure (Doc. No. 47-5 and 47-8); and

• September 12, 2017, notifying Plaintiff that the Properties are unsound for human occupancy and that Notices of Demolition will be posted on the structures (Doc. No. 47-6 and 47-7; Doc. No. 48-1 at PageID 980-87).

The notices and invoices were sent to a variety of different addresses. Several notices were sent to an address listed by Collins on the 2013 quitclaim, 632 Lakewood Circle, Colorado Springs, CO 80910. (Doc. No. 47-20; Doc. No. 48-1 at PageID 856-93, 896-951, 953-71.) Three of the notices were returned to Miamisburg labeled "RETURN TO SENDER," while others were signed for by Collins. (Doc. No. 48-1 at PageID 953-59, 960-65, 966-71, 980-87.) Miamisburg also mailed two Final Violation Notices, informing Bruce that the properties had been declared a nuisance and were subject to demolition, to P.O. Box 26018, Colorado Springs, Colorado 80936. (Doc. No. 47

at PageID 339-42; Doc. Nos. 47-5, 47-8, 47-16.) Bruce has maintained that P.O. Box for 36 years and he listed it on the 2016 quitclaim deed. (Doc. No. 47 at PageID 339-42; Doc. No. 47-19.) Miamisburg also mailed the two Final Notices to Bruce at the Colorado State Penitentiary[1] in Canon City, Colorado. (Doc. No. 47-6, 47-7.) Additionally, Miamisburg posted the Final Notices on the front doors of both properties. (Doc. No. 47-11, 47-13.) Having received no response,[2] Miamisburg published notices of demolition in relation to the properties in five Miami Valley newspapers from September 21 to September 28, 2017 and April 19 to April 26, 2018. (Doc. No. 48-1 at PageID 849-54.) Miamisburg ultimately demolished the properties and mailed invoices for the demolition costs to Bruce's P.O. Box on July 20, 2018. (Doc. No. 47-10.)

Bruce filed his Complaint on March 5, 2021. (Doc. No. 1.) Bruce alleges claims of deprivation of property under the Fifth and Fourteenth Amendments, violation of Procedural Due process under the Fifth and Fourteenth Amendments, and

[1] Bruce was incarcerated for a period of time in either 2015 or 2016. (Doc. No. 47 at PageID 349, 364-65.)

[2] Bruce also maintained an email address at Taxcutter@msn.com, which Miamisburg used in 2013 and 2015 to communicate with Bruce about the condition of the properties. (Doc. No. 47 at PageID 507; Doc. No. 48-1 at PageID 973, 975, 977-78.)

violation of the Eighth and Fourteenth Amendments.[3] (Doc. No. 1 at PageID 5-9.) All of Bruce's claims are brought pursuant to 42 U.S.C. § 1983. (*Id.*) Miamisburg filed the present Motion on November 1, 2022 (Doc. No. 48), Bruce filed his opposition on December 13, 2022 (Doc. No. 52), and Miamisburg filed its reply on January 5, 2023 (Doc. No. 54). This matter is fully briefed and ripe for review.

II. LEGAL STANDARDS FOR SUMMARY JUDGMENT

Rule 56 of the Federal Rules of Civil Procedure provides that "[a] party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense—on which summary judgment is sought" and that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Alternatively, summary judgment is denied "[i]f there are 'any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party.'" *Hancock v. Dodson*, 958 F.2d 1367, 1374 (6th Cir. 1992) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986)).

The party seeking summary judgment has the initial burden of informing the court of the basis for its motion and identifying those portions of the pleadings, depositions, answers to interrogatories,

[3] A claim for violation of Substantive Due Process was dismissed on November 3, 2021. (Doc. No. 28.)

and admissions on file, together with the affidavits, that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *see also* Fed. R. Civ. P. 56(a), (c). In opposing summary judgment, the nonmoving party cannot rest on its pleadings or merely reassert its previous allegations. *Anderson*, 477 U.S. at 248-49. It also is not sufficient to "simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The nonmoving party must "go beyond the [unverified] pleadings" and present some type of evidentiary material in support of its position. *Celotex Corp.*, 477 U.S. at 324.

A party's failure "to properly address another party's assertion of fact as required by Rule 56(c)" can result in the court "consider[ing] the fact undisputed for purposes of the motion." Fed. R. Civ. P. 56(e). Additionally, "[a] district court is not ... obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim." *InterRoyal Corp. v. Sponseller*, 889 F.2d 108, 111 (6th Cir. 1989). "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3).

In ruling on a motion for summary judgment, it is not the judge's function to make credibility determinations, "weigh the evidence[,] and determine the truth of the matter, but to determine whether there is a genuine issue for trial." *Anderson*, 477 U.S. at 249, 255. In determining whether a genuine issue of material fact exists, the court must assume as true the evidence of the nonmoving party and draw all reasonable inferences in that party's favor. *Id.* at 255; *Matsushita*, 475 U.S. at 587; *Tolan v. Cotton*, 572 U.S.

650, 660 (2014). However, the "mere existence of a scintilla of evidence in support of the" nonmoving party is not sufficient to avoid summary judgment. *Anderson*, 477 U.S. at 252. "There must be evidence on which the jury could reasonably find for the plaintiff." *Id.* The inquiry, then, is "whether reasonable jurors could find by a preponderance of the evidence that the" nonmoving party is entitled to a verdict. *Id.*

III. ANALYSIS

Miamisburg makes four arguments in favor of summary judgment in its Motion. First, Miamisburg argues that the statute of limitations has expired because Bruce should have been on notice of the demolition that occurred nearly three years prior to the initiation of this action. (Doc. No. 48 at PageID 830-33.) Second, Miamisburg argues that a Fifth Amendment taking did not occur because the city was abating a public nuisance. (*Id.* at PageID 833-36.) Third, Miamisburg argues that it provided Bruce due process because it provided notice and the opportunity for a hearing. (*Id.* at PageID 836-40.) Finally, Miamisburg argues the fines and fees assessed to Bruce were not excessive and do not fall within the meaning of the Eight Amendment. (*Id.* at PageID 840-42.) As the statute of limitations is dispositive of the entire action, the Court finds it unnecessary to rule on Miamisburg's remaining arguments.

A. Statute of Limitations

"Section 1983 does not provide a statute of limitations, so we must borrow one from the most

analogous state cause of action." *3799 Mill Run Partners, LLC v. City of Hilliard, Ohio*, 839 F. App'x 948, 950 (6th Cir. 2020). Consequently, the Supreme Court has explained that the statute of limitations for a Section 1983 action is borrowed from the limitations period for personal injury actions provided by the state in which the action arises. *Wilson v. Garcia*, 471 U.S. 261, 275-76, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985), *partially superseded by statute as stated in Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 377-380, 124 S.Ct. 1836, 158 L.Ed.2d 645 (2004). The Supreme Court later clarified that where a state has multiple statutes of limitations for different categories of personal injury, the residual personal injury statute of limitations applies. *Owens v. Okure*, 488 U.S. 235, 249-50, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). The Sixth Circuit has held that the limitations period for § 1983 actions arising in Ohio is the two-year period found in Ohio Revised Code § 2305.10. *Browning v. Pendleton*, 869 F.2d 989, 991-92 (6th Cir. 1989). The parties agree that the two-year statute of limitations applies in this case.

The inquiry then becomes when the statute of limitations began to run on Bruce's claims. The Sixth Circuit has repeatedly held, "'[t]he statute of limitations commences to run when the plaintiff knows or has reason to know of the injury which is the basis of his action. A plaintiff has reason to know of his injury when he should have discovered it through the exercise of reasonable diligence.'" *Hughes v. Vanderbilt Univ.*, 215 F.3d 543, 548 (6th Cir. 2000) (quoting *Sevier v. Turner*, 742 F.2d 262, 273 (6th Cir. 1984)). The test to determine whether a plaintiff has reason to know of an injury "is an objective one, and the Court determines 'what event should have alerted

the typical lay person to protect his or her rights.'" *Sharpe v. Cureton*, 319 F.3d 259, 266 (6th Cir. 2003) (quoting *Dixon v. Anderson*, 928 F.2d 212, 215 (6th Cir. 1991)).

Miamisburg argues that the relevant inquiry is whether the notices it sent to Bruce were "reasonably calculated" to apprise Bruce of the pending demolitions. (Doc. No. 48 at PageID 832-33.) Miamisburg also argues that latest the action could have accrued would have been July 20, 2018, when it sent Bruce the invoices for the demolitions of the properties. (*Id.* at PageID 833.) In opposition, Bruce argues the statute of limitations had not run because he filed this action shortly after learning the buildings had been demolished. (Doc. No. 52 at PageID 1005.) Bruce argues that the notices sent by Miamisburg were insufficient because he never received them. (*Id.* at PageID 1006.) Moreover, Bruce argues that posting notices on the properties themselves was inadequate because he never visited the buildings. (*Id.*) Finally, Bruce argues that posting notices in Miami Valley newspapers was inadequate because he lives 800 miles away and did not have the opportunity to see the notices. (*Id.*)

Jacks v. City of Youngstown offers a useful comparator to the current controversy. No. 4:19-CV-2689, 2021 U.S. Dist. LEXIS 143358, 2021 WL 3288572 (N.D. Ohio Aug. 2, 2021). In *Jacks*, the plaintiff's property was demolished in January 2016 and the parties agreed that he was aware that property had been demolished by November 2017. *Id.* at 7. The plaintiff then filed his complaint in November 2019. Id. In evaluating whether the statute of limitations had run on the plaintiff's claim, the court found "[i]t is not reasonable for [the plaintiff], a

real estate professional with 45 years of experience, to fail to visit his property or send an agent to visit his property for almost two years." *Id.*

Bruce filed his complaint on March 5, 2021, meaning his claim is barred unless he did not know or did not have reason to know of his injury before March 5, 2019. Similar to the plaintiff in Jacks, Bruce has 46 years of experience in property ownership and owns 50 properties across the county. (Doc. No. 47 at PageID 353-54, 382-83, 425.) The Final Violation Notices were posted on the properties by at least May 30, 2018. (Doc. No. 47-11; Doc. No. 47-13.) The properties themselves were demolished at some point prior to July 20, 2018, when Miamisburg sent the invoices for the demolitions (Doc. No. 47-10), because Miamisburg would send those invoices to Bruce after they had received them from the contractor who did the work. (Doc. No. 45 at PageID 288-89, 293-99.)

For an individual with 46 years of experience in property ownership and who currently owns 50 properties across the country, it is not reasonable for Bruce to have gone at least eight months without realizing two of his building were no longer in existence. Indeed, a call asking virtually anyone to drive by the properties would have confirmed this. Moreover, Bruce states that he filed this action shortly after learning of the properties' demolition, which means nearly three years elapsed between the demolition of the properties and when Bruce realized they had been demolished. Bruce also reasonably should have discovered the threat of demolition upon his properties even sooner by having an agent simply visit the properties, at which point they would have seen the Final Violation Notices posted on the front doors.

The Court is not inclined to accept Bruce's argument that he never visited the property as a worthwhile rejoinder to why he was unaware the properties had been demolished. Indeed, Bruce's argument that he was 800 miles away is equally unavailing. If the Court followed Bruce's suggestions, any far-off and difficult to locate landlord could let their property fall into complete ruin and then sue the city that demolished the blight for a significant sum by simply ignoring their property entirely. This would leave local governments powerless to protect the health and safety of its communities from derelict and dangerous structures. The Court is not willing to endorse such a complete abdication of responsibility by property owners.

A reasonably diligent person in Bruce's position should certainly have learned that their property had been demolished in the eight or more months between the demolition of the property and the last day Bruce could have discovered his injury under the statute of limitations. The Court finds that Bruce's Complaint was filed outside the statute of limitations.

IV. CONCLUSION

For the reasons stated above, the Court **GRANTS** Defendant City of Miamisburg's Motion for Summary Judgment (Doc. No. 48).

DONE and **ORDERED** in Dayton, Ohio, this Friday, January 13, 2023.

s/Thomas M. Rose
THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE