

FILED
COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO

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JEANNE M. STEPHEN
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
TUSCARAWAS COUNTY, OHIO
GENERAL TRIAL DIVISION

TARA WRIGHT-TIMBERLAKE,	:	
	:	Case Number: 2017 CV 09 0670
Plaintiff,	:	
	:	Judge Elizabeth Lehigh Thomakos
vs.	:	
	:	<u>JUDGMENT ENTRY</u>
ROBERT GINSBACH,	:	
	:	
Defendant.	:	

This matter came before the Court for consideration of the following motions, listed with their identifiable responsive arguments below:

July 2, 2018	Defendant's Motion for Summary Judgment
July 2, 2018	Defendant's Motion to Compel for More Defined and Complete Answers with Sanction (Interrogatories)
7/27/2018	Plaintiff's Response and Objections to Defendant's First Set of Interrogatories and Motion to Compel
July 9, 2018	Plaintiff's Motion for Summary Judgment

July 27, 2018

Defendant's Motion for Continuance/Enlargement of Time

July 27, 2018

Plaintiff's Motion for Protective Order

The Court has completed a thorough review of the motions, the case file, and the relevant law.

Defendant's Motion for Continuance/Enlargement of Time

On July 27, 2018, Defendant requested a 60 day continuance/enlargement of time to hire counsel and reply to the pending motions. Defendant argues that he was in the process of hiring and meeting with counsel and that he had new evidence in support of his case.

The Court **FINDS** that more than 60 days have passed since Defendant made his request.

The Court further **FINDS** that no counsel has entered an appearance in this case on Defendant's behalf.

The Court **FINDS**, therefore, that Defendant's **Motion for Continuance/Enlargement of Time** should be **denied as moot**.

Plaintiff's Motion for Summary Judgment

Plaintiff filed a Complaint against Defendant on September 15, 2017. Plaintiff's Complaint alleges that Defendant is a vexatious litigator pursuant to R.C. 2323.52. Plaintiff

requests an order prohibiting Defendant from instituting any litigation, continuing any litigation, or making any application in any litigation, in any court of the State of Ohio or its subdivisions, without first obtaining leave from this Court.

Defendant filed a Counterclaim for Damages on November 15, 2017. Defendant alleges that Plaintiff has caused him emotional stress, mental anguish, loss of consortium, breakdown of family relationships, denied access to companionship with Defendant's son, interfered with custody, invasion of privacy, and gaining records under false pretense. Defendant's Counterclaim further alleges that Plaintiff gave misleading information about him to a Court, violated R.C. 2921.21, and deprived him of his rights under color of law. Defendant seeks damages against Plaintiff in the sum of \$350,000.00.

Plaintiff requests summary judgment in her favor as to the Complaint. Plaintiff argues that no genuine issues of material fact remain for trial. Plaintiff argues that Defendant has engaged in vexatious conduct, and he is certain to continue to engage in additional vexatious conduct in current and likely future litigation unless he is prohibited from doing so by Order of this Court. Plaintiff argues that Defendant is a vexatious litigator under R.C. 2323.52. Plaintiff argues that the dispositions and entries before this Court clearly show that Defendant's complaints consist of nonsensical allegations and were found to be frivolous by various courts of law. Plaintiff argues that she is entitled to judgment as a matter of law. Therefore, Plaintiff requests that the Court issue an order,

pursuant to R.C. 2323.52(D), indefinitely prohibiting Defendant from instituting any litigation, continuing any litigation, or making application in any litigation, in any court of the State of Ohio or its subdivisions, without first obtaining leave from this Court.

Under Civ. R. 56(C), a summary judgment may be granted if (1) no genuine issue exists as to any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) "it appears that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the party against whom the Motion for Summary Judgment is made, that conclusion is adverse to the non-moving party." *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). Likewise, Civ.R. 56(C) provides that summary judgment shall not be rendered if it appears from the evidence that there is a genuine issue of fact that remains to be litigated.

The moving party has the burden of showing that no genuine issue exists as to any material fact. *Harless v. Willis Day Warehousing Co., Inc.*, 54 Ohio St.2d 64, 66, 375 N.E.2d 46 (1978).

The moving party requesting a summary judgment must inform the trial court of the basis for its motion and identify portions of the record demonstrating the lack of a genuine issue of fact on a material element of the nonmoving party's claim. *Dresher v. Burt*, 75 Ohio St.3d 280, 296, 662 N.E.2d 264 (1996). If the moving party satisfies this initial burden, the nonmoving party then has a reciprocal burden to set forth specific facts that

show that there is a genuine issue for trial. *Vahila v. Hall*, 77 Ohio St.3d 421, 429, 674 N.E.2d 1164 (1997). If the nonmoving party does not respond in this way, summary judgment, if appropriate, shall be entered against the nonmoving party. *Vahila*, at 429.

The Court may not weigh the evidence, assess the credibility of the parties or choose among reasonable inferences when determining whether to grant summary judgment. *Dupler v. Mansfield Journal Co., Inc.*, 64 Ohio St.2d 116, 121, 413 N.E.2d 1187 (1980). The Court must construe the evidence in a light most favorable to the nonmoving party and resolve any doubts in favor of the nonmoving party. See *Morris v. Ohio Casualty Ins. Co.*, 35 Ohio St.3d 45, 47, 517 N.E.2d 904 (1988).

Civ.R. 56(C) provides, in relevant part, that “[s]ummary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or stipulation construed most strongly in the party's favor.”

Documents attached to a complaint are part of the complaint, and those documents are reviewable by the trial court in rendering summary judgment. *City of New Lexington v. Dutiel*, 5th Dist. Perry Case Nos. 01-CA-3, 01-CA-6, 01-CA-7, 2002-Ohio-1284, citing *First Fed. Sav & Loan Assn. v. Elgin*, 3d Dist. Crawford No. 3-94-25, 1995 Ohio App. LEXIS 1272, at *2 (Mar. 29, 1995).

R.C. 2323.52(B) provides, in relevant part, that a person who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator.

R.C. 2323.52(A)(3) provides that “[v]exatious litigator” means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. “Vexatious litigator” does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person

is representing or has represented self pro se in the civil action or actions. For the purposes of division (A)(3) of this section, "civil action" includes a proceeding under section 2743.75 of the Revised Code."

"'Vexatious conduct' means conduct of a party in a civil action that satisfies any of the following: (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action. (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. (c) The conduct is imposed solely for delay." R.C. 2323.52(A)(2).

R.C. 2323.52(D)(1) provides as follows:

If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed under division (F) (1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

R.C. 2323.52(D)(3) provides that “[a] person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.”

R.C. 2323.52(E) provides that “[a]n order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.”

R.C. 2323.52(H) provides that “[t]he clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept

pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.”

The Court **FINDS** that reasonable minds can come to but one conclusion, and that conclusion is adverse to Defendant.

Upon review of the Complaint and the documents attached thereto, the Court **FINDS** that the pleadings and other documents attached to Plaintiff’s Complaint demonstrate that Defendant has habitually, persistently, and without reasonable grounds engaged in vexatious conduct against Plaintiff and others in numerous civil actions.

Upon review, the Court **FINDS** that these documents indicate that Defendant has brought several baseless and unsubstantiated claims against Plaintiff and others. As an example, the Memorandum Opinion and Order issued by Judge Sara Lioi, in the United States District Court Northern District of Ohio, Eastern Division Case No. 5:17cv57, characterizes Ginsbach’s Complaint as consisting only of very generalized factual allegations and bald legal conclusions (Plaintiff’s Exhibit 11).

Upon review of the entire Court file, the Court **FINDS** several examples that further indicate Defendant has engaged in frivolous conduct.

The Court **FINDS** that Defendant’s Counterclaim filed in this case is an example of vexatious conduct because Defendant does not allege actual facts that support the plethora

of conclusory allegations against Plaintiff, and the Counterclaim serves merely to harass Plaintiff and/or is imposed solely for delay.

The Court **FINDS** that Defendant's First Set of Interrogatories filed in this action represent another example of vexatious conduct by Defendant. The requested Interrogatories are clearly designed merely to harass or maliciously injure Plaintiff and/or others.

The Court **FINDS** that no genuine issues exist as to any material fact pertaining to Plaintiff's Complaint.

The Court **FINDS** that Defendant is a vexatious litigator as defined in R.C. 2323.52(A)(3).

The Court **FINDS** that Plaintiff and others have been required to defend against the habitual and persistent vexatious conduct of Defendant.

The Court **FINDS** that Plaintiff is entitled to judgment as a matter of law.

The Court **FINDS** that **Plaintiff's Motion for Summary Judgment** should be granted.

The Court **FINDS** that Defendant should be declared a vexatious litigator pursuant to R.C. 2323.52(B).

The Court **FINDS** that Defendant should be prohibited from (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; (b) Continuing any legal proceedings that he has instituted in the court of

claims or in a court of common pleas, municipal court, or county court prior to the entry of the order; and (c) Making any application, other than an application for leave to proceed under division (F) (1) of this section, in any legal proceedings instituted by Defendant or another person in the court of claims or in a court of common pleas, municipal court, or county court without first obtaining leave of this Court to proceed.

The Court **FINDS** that Defendant should be further prohibited from instituting legal proceedings in a court of appeals, continue any legal proceedings that Defendant has instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by Defendant or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

Based upon the above findings, the Court **FINDS** that Defendant is enjoined from pursuing his Counterclaim in this case or continuing the legal proceedings instituted herein.

The Court **FINDS**, therefore, that **Defendant's Motion for Summary Judgment, Defendant's Motion to Compel for More Defined and Complete Answers with Sanction (Interrogatories), and Plaintiff's Motion for Protective Order** are moot.

Decision

It is therefore **ORDERED** that Defendant's **Motion for Continuance/ Enlargement**

of Time is denied as moot.

It is further **ORDERED** that **Plaintiff's Motion for Summary Judgment** is granted.

It is further **ORDERED** that Defendant is declared a vexatious litigator pursuant to R.C. 2323.52(B).

It is further **ORDERED** that Defendant is prohibited from (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; (b) Continuing any legal proceedings that Defendant has instituted in the court of claims or in a court of common pleas, municipal court, or county court prior to the entry of the order; and (c) Making any application, other than an application for leave to proceed under division (F) (1) of this section, in any legal proceedings instituted by Defendant or another person in the court of claims or in a court of common pleas, municipal court, or county court without first obtaining leave of this Court to proceed.

It is further **ORDERED** that Defendant is prohibited from instituting legal proceedings in a court of appeals, continue any legal proceedings that Defendant has instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by Defendant or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

It is further **ORDERED** that Defendant is enjoined from pursuing his Counterclaim

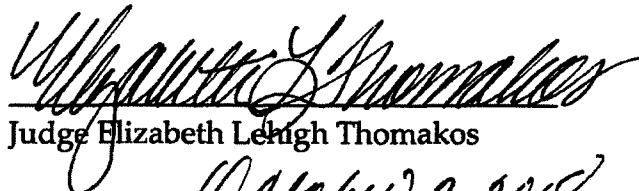
in this case or continuing the legal proceedings instituted herein.

It is further **ORDERED** that **Defendant's Motion for Summary Judgment, Defendant's Motion to Compel for More Defined and Complete Answers with Sanction (Interrogatories), and Plaintiff's Motion for Protective Order** are moot.

It is further **ORDERED** that Court costs shall be assessed to Defendant.

It is further **ORDERED** that the Clerk of Courts shall close the case file and remove it from the pending docket.

IT IS SO ORDERED.

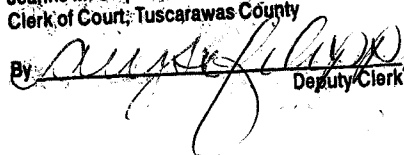

Judge Elizabeth Lehigh Thomakos

Dated: October 2, 2018

cc: Tara Wright-Timberlake, Esq. ✓
Robert Ginsbach
Supreme Court of Ohio (certified copy)
Court Administrator ✓ *af*

I, The undersigned Clerk of Courts hereby certify this to be a true and correct copy of the original filed in the Common Pleas Court of Tuscarawas County, Ohio.

Jeanne M. Stephen
Clerk of Court, Tuscarawas County

By 
Deputy Clerk