

IN THE SUPREME COURT OF OHIO

PRASAD BIKKANI)	
)	
Plaintiff-Appellant,)	CASE NO. 2006-2073
)	
v.)	
)	(Seeking Appeal from Eighth
ROTAN E. LEE, ESQ., <u>et al.</u>)	District Court of Appeals -
)	Case No. CA-06-088650)
Defendants-Appellees)	
)	
)	

MOTION OF NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC., TOTAL HEALTH CARE PLAN, INC., AND MATTHEW T. FITZSIMMONS, ESQ. TO STRIKE APPELLANT'S MEMORANDUM IN OPPOSITION TO MOTION OF MATTHEW T. FITZSIMMONS, ESQ. TO REMOVE HIM AS A PERSONALLY NAMED DEFENDANT-APPELLEE, MOTION FOR SANCTIONS, AND MOTION TO HAVE PRO SE APPELLANT CLASSIFIED AS A VEXATIOUS LITIGATOR

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Plaintiff-Appellant

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FILED
JAN 11 2007
MARCIA J. MENGEL, CLERK
SUPREME COURT OF OHIO

Counsel for Defendants-Appellees
 NorthEast Ohio Neighborhood Health
 Services, Inc. and Total Health
 Care Plan, Inc.

Defendants-Appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP"), and their attorney, Matthew T. Fitzsimmons, move the Court for an Order: (1) striking the "Memorandum in Opposition by Appellant Prasad Bikkani to 12/6/2006 Filed Attorney Matthew T. Fitzsimmons's Materially False Motion," which pro se appellant filed on December 18, 2006; (2) sanctioning pro se appellant for his frivolous filings; and (3) classifying pro se appellant as a vexatious litigator.

On December 6, 2006, NEON's and THCP's attorney, Matthew T. Fitzsimmons, filed a Motion to Remove Him as a Personally Named Defendant-Appellee. The basis for the Motion was simple: attorney Fitzsimmons is not, and has never been, a party in this lawsuit. On December 18, 2006, pro se appellant filed a Memorandum in Opposition. Similar to pro se appellant's other filings during this case, the Memorandum in Opposition is an incoherent rant of outlandishly false accusations of fraud, conspiracy, RICO violations, embezzlement, money laundering, etc. The 29-page Memorandum in Opposition is the latest in a long list of appellant's frivolous and scandalous flings with the trial court, the Eighth District Court of Appeals, and the Supreme Court. It is grounded neither in law nor in fact. Rather, it is a delusionary tale of a disgruntled terminated employee hell-bent on destroying the business and professional

reputations of NEON, THCP, and attorney Fitzsimmons -- reputations that have taken a lifetime to build.

Pro se appellant's disingenuous claim that attorney Fitzsimmons is a party to this lawsuit is, like all of appellant's other claims, patently false. On June 21, 2006 in the trial court proceedings, appellant filed, without leave of court, an Amended Complaint which purported to add attorney Fitzsimmons as a new defendant. On July 5, 2006, NEON and THCP filed a Motion to Strike the Amended Complaint. On July 25, 2006, the trial court granted the Motion to Strike and entered the following Journal Entry:

DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION TO STRIKE PLAINTIFF'S AMENDED COMPLAINT PURPORTING TO NAME THEIR COUNSEL AS A DEFENDANT (FILED 07/05/2006) IS GRANTED. THE AMENDED COMPLAINT FILED BY PLAINTIFF ON 6/21/06 IS HEREBY STRICKEN. BOOK 3623 PAGE 0047 07/25/2006 NOTICE ISSUED¹

The foregoing unequivocally demonstrates that attorney Fitzsimmons is not and has never been a party to this lawsuit. The trial court saw through appellant's gamesmanship and refused to allow appellant to add NEON's and THCP's attorney as a defendant. Just because appellant put attorney Fitzsimmons' name on the improperly filed Amended Complaint -- which was

¹ Attached as Exhibit A are true, accurate, and authentic copies of these electronic trial court docket entries for Prasad Bikkani v. Rotan E. Lee, Esq., et al., Case No. CV 05 566249, in the Court of Common Pleas, Cuyahoga County, Ohio.

"Hereby Stricken" from the record -- does not make attorney Fitzsimmons a party. Pro se appellant refuses to accept that fact because, as his contemptuous conduct has demonstrated throughout this case, he does not concern himself with court orders or the Ohio Rules of Civil Procedure. None of the multitude of defamatory accusations contained in appellant's Memorandum in Opposition refutes the basic fact that attorney Fitzsimmons is not a party to this lawsuit.

The obvious purpose of pro se appellant's Memorandum in Opposition is to continue to harass and to defame NEON, THCP, and attorney Fitzsimmons. Pro se appellant's baseless, scandalous accusations have no relevance -- absolutely none -- to the issue of whether attorney Fitzsimmons is a party to this lawsuit. Accordingly, the Court should strike the Memorandum in Opposition.

Moreover, in addition to striking the Memorandum in Opposition, the Court should sanction pro se appellant for filing it, and should classify him as a vexatious litigator to prevent him from filing future frivolous and scandalous papers.² S. Ct. Prac. R. XIV, Section 5 provides that:

² See the cases awarding sanctions -- State ex rel. Grendell v. Davidson (1999), 86 Ohio St.3d 629, 716 N.E.2d 704; State ex rel. Kreps v. Christiansen (2000), 88 Ohio St.3d 313, 725 N.E.2d 663 -- cited and discussed in NEON's and THCP's Response to Appellant's Memorandum in Support of Jurisdiction in pending

(A) If the Supreme Court, sua sponte or on motion by a party, determines that an appeal or other action is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose, on the person who signed the appeal or action, a represented party, or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Supreme Court considers just. An appeal or other action shall be considered frivolous if it is not reasonably well-grounded in fact or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(B) If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under section 5(A) of this rule, the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Supreme Court determines that a party is a vexatious litigator under this rule, the Court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Supreme Court without first obtaining leave, prohibiting the filing of actions in the Supreme Court without the filing fee or security for costs required by S. Ct. Prac. R. XV, or any other restriction the Supreme Court considers just. (emphasis added).

The Memorandum in Opposition is just the latest of pro se appellant's many frivolous and scandalous flings. He has filed similar papers with the trial court, the Eighth District, and the Supreme Court in this case and other cases. From the inception of this case, pro se appellant has refused to comply with the trial court's Orders, the Eighth District's Orders, the Ohio Rules of Civil Procedure, the Ohio Rules of Appellate

Supreme Court Case No. 2006-2302, Prasad Bikkani v. Rotan E. Lee, Esq., et al., which are incorporated herein by reference.

Procedure, the Supreme Court Practice Rules, and Ohio law. He has exhibited a complete disregard for the judicial process since the day he filed his frivolous 30-page, 107-paragraph, six-count Complaint against fifteen defendants, seeking \$54 million in damages. The Complaint alleged claims of fraud, Ohio RICO violations, federal and Ohio discrimination claims based upon race, sex, national origin, and age, wrongful termination, loss of consortium, and a purported shareholder's derivative action. After NEON and THCP filed various Motions to Dismiss, the trial court dismissed all of appellant's claims except for his Ohio employment claims.

On three occasions, appellant moved the trial court to disqualify and to disbar attorney Matthew T. Fitzsimmons. Appellant filed a Notice of Appeal after the trial court denied appellant's third Motion to Disqualify, despite the fact that it was obvious that the trial court's order was not a final appealable order. Four days after he filed the Notice of Appeal, the Eighth District dismissed the appeal, sua sponte, for lack of a final appealable order. Appellant, however, refused to accept that ruling and filed a Motion for Reconsideration, which was nothing more than an incomprehensible defamatory rant. The Eighth District denied the Motion for Reconsideration and entered a final Judgment Entry dismissing the appeal for lack of a final appealable order. Despite that

ruling, appellant continued to file frivolous papers with the Eighth District. Thereafter, the Eighth District sanctioned appellant, and ordered him to pay NEON and THCP \$1,400 and \$1,360 respectively, to cover, in part, the legal fees incurred by them defending the frivolous appeal. After the Eighth District dismissed the appeal and the case was returned to the trial court, on October 3, 2006, the trial court dismissed all of appellant's remaining claims due to his repeated discovery misconduct, his failure to appear for his properly noticed deposition, his failure to answer interrogatories and produce documents, and his refusal to comply with the trial court's orders to respond to NEON's and THCP's legitimate discovery requests.

On November 9, 2006, appellant filed the Notice of Appeal with the Supreme Court in this case, seeking to appeal the Eighth District's Order dismissing his appeal for lack of a final appealable order. Appellant did so despite the fact that Ohio law is crystal clear that an order denying a motion to disqualify is not a final appealable order. Appellant then filed a second appeal relating to the Eighth District's sanctioning of him (Case No. 2006-2302). Similar to appellant's Memorandum in Opposition at issue here, appellant's Memorandum in Support of Jurisdiction in Case No. 2006-2302 also makes defamatory accusations against NEON, THCP, and attorney

Fitzsimmons. Appellant is representing himself because no licensed attorney would dare come before the Supreme Court and file the types of scandalous papers that pro se appellant continues to file here. Appellant cannot be allowed to continue to make false accusations of fraud, conspiracy, RICO violations, embezzlement, money laundering, etc. without suffering the consequences of his misconduct.

Appellant's misconduct clearly rises to the level of habitual. This is not the only case where appellant has engaged in this type of frivolous conduct. Appellant has a history of harassing opposing counsel with motions to disqualify and to disbar, of making unsubstantiated allegations of conspiracy, extortion, perjury, fraud, etc., and of filing frivolous appeals. He exhibited the same conduct in Miles Landing Homeowners Ass'n v. Vihaya Bikkani, et al., Case No. CV-04-519870 in the Court of Common Pleas of Cuyahoga County, by filing similar motions requesting the disqualification and disbarment of opposing counsel at both the trial and appellate levels. Appellant also repeatedly filed frivolous appeals with the Eighth District and Supreme Court in that case. During a four-month period in that case, appellant filed three appeals with the Eighth District -- all of which were dismissed for lack of final appealable orders. See, Miles Landing Homeowners Ass'n v. Bikkani (8th Dist. June 29, 2006), 2006 WL 1781226, 2006-Ohio-

3328 (CA-05-863356 and CA-05-86942), and CA-05-86747 which is not reported. On September 22, 2005, appellant filed a Notice of Appeal with the Supreme Court in regard to the Eighth District's Order in Case No. CA-05-86747. The Supreme Court of Ohio declined jurisdiction and dismissed the appeal on December 28, 2005. See, Miles Landing Homeowners Ass'n v. Bikkani (2005), 107 Ohio St.3d 1699, 2005-Ohio-6763, Case No. 2005-1786. On September 11, 2006, appellant filed a Notice of Appeal with the Supreme Court with regard to the Eighth District's Orders in Case Nos. CA-05-863356 and CA-05-86942. The Supreme Court has not yet accepted or dismissed that appeal. The similarities between appellant's conduct in Miles Landing and this case are remarkable: defamatory and unsubstantiated accusations, outlandish claims, motions to disqualify and to disbar opposing counsel, and improper appeals of orders that are patently not final and appealable.

Nothing and no court has been able to rein in appellant. The trial court struck appellant's scandalous filings, but that did not stop him from filing more. The trial court denied appellant's Motion to Disqualify attorney Fitzsimmons, but that did not stop him from filing two more Motions to Disqualify. The Eighth District dismissed, sua sponte, his appeal (four days after he filed it) for lack of a final appealable order, but that did not stop him from filing a defamatory, inflammatory

Motion for Reconsideration and an appeal with the Supreme Court. The Eighth District sanctioned appellant for filing the frivolous appeal, but that did not stop him. The trial court dismissed all of appellant's claims for failing to obey the trial court's orders to make discovery, but that did not stop him.

Appellant is bastardizing the legal process, and in the process causing innocent parties to incur thousands and thousands of dollars in legal fees responding to his frivolous filings. The only way to stop appellant is for the Supreme Court to classify him as a vexatious litigator and to impose filing restrictions on him. Nothing else has worked, and nothing else will work. Enough is enough. Accordingly, NEON and THCP urge the Court, in the strongest terms possible, to sanction appellant and to classify him as a vexatious litigator.³

For the foregoing reasons, NEON, THCP, and attorney Fitzsimmons urge the Court to strike the Memorandum in Opposition, to sanction appellant, and to classify appellant as a vexatious litigator.

³ Should the Court decide to impose NEON's and THCP's attorneys' fees, costs, and expenses as sanctions against pro se appellant, they will submit such evidence to the Supreme Court for its consideration.

Respectfully submitted,

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Services, Inc. and Total Health
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CERTIFICATE OF SERVICE

A copy of the foregoing Motion of NorthEast Ohio Neighborhood Health Services, Inc., Total Health Care Plan, Inc., and Matthew T. Fitzsimmons, Esq. to Strike Appellant's Memorandum in Opposition to Motion of Matthew T. Fitzsimmons, Esq. to Remove Him as a Personally Named Defendant-Appellee, Motion for Sanctions, and Motion to Have Pro Se Appellant Classified as a Vexatious Litigator was sent by regular U.S. mail, postage prepaid, this 10th day of January 2007 to the following:

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06/21/2006 P1 AC AMENDED COMPLAINT WITH A NEW DEFT: RICO ACTIVITIES,
CONSPIRACY, CORPORATE FRAUD, EMBEZZLEMENT, MAIL FRAUD,
FINANCE FRAUD, RETALIATION, WRONGFUL TERMINATION,
FIDUCIARY NEGLIGENCE WITH FRAUD WHICH LEAD TO
CORPORATION DISSOLUTION, ETC.....JURY DEMANDED.....FILED.
PRO SE (9999999)

07/05/2006 D MO DEFENDANT(S) NORTH EAST OHIO NEIGHBORHOOD HEALTH
SERVICES(D14) and TOTAL HEALTH CARE PLAN INC(D15) MOTION
TO STRIKE PLAINTIFF'S AMENDED COMPLAINT PURPORTING TO
NAME THEIR COUNSEL AS A DEFENDANT OR, IN THE
ALTERNATIVE, TO BAR PLAINTIFF FROM FILING AND SERVICING
THE AMENDED COMPLAINT FILED. MATTHEW T FITZSIMMONS
0013404 07/25/2006 - UNOPPOSED AND GRANTED

07/25/2006 N/A JE DEFENDANTS' (NORTH EAST OHIO NEIGHBORHOOD HEALTH
SERVICES AND TOTAL HEALTH CARE PLAN INC) MOTION TO
STRIKE PLAINTIFF'S AMENDED COMPLAINT PURPORTING TO NAME
THEIR COUNSEL AS A DEFENDANT (FILED 07/05/2006) IS GRANTED. 
THE AMENDED COMPLAINT FILED BY PLAINTIFF ON 6/21/06 IS
HEREBY STRICKEN. BOOK 3623 PAGE 0047 07/25/2006 NOTICE
ISSUED

