



## I. INTRODUCTION

1. Relator, Steven A. Bozsik is a citizen in the State of Ohio and is being denied his substantial right to appeal a September 5, 2007 final order by the Wayne County Court of Common Pleas.
2. Respondents are elected Judges with the Ninth District Court of Appeals. In that capacity, among other things, Respondents preside over appeals and original actions in the counties of Wayne, Medina, Summit, and Lorain.
3. Respondents are refusing Relator his substantial rights to appeal the September 5, 2007 final order by the Wayne County court of common pleas.

## II. STATEMENT OF FACTS

4. Relator incorporates by reference paragraphs 1 through 3 of this complaint as if completely rewritten herein.
5. On December 3, 1999 Relator purchased two burial plats through a written purchase agreement from the City of Rittman Cemetery in Rittman, Ohio for a purchase price of \$1,300.00. (Attached hereto and identified as A-8).
6. On or about February 15, 2000, Relator rendered full payment of \$1,300.00 satisfying his responsibility with the purchase agreement/contract. (Attached hereto and identified as A-9).
7. On or about March 1, 2000, the Director of Public Service for the City of Rittman, Ohio issued a Certificate of Burial Rights from the purchase agreement to Ms. Karen Jordon. (Attached hereto and identified as A-10).

8. The City of Rittman Cemetery refuses to honor the purchase agreement and continues to refuse to re-issue a new burial plat deed as written in the purchase agreement/contract.
9. On December 12, 2006 Realtor moved the Honorable James L. Kimbler, Judge of the Medina County Court of Common Pleas for leave to commence a breach of contract civil action pursuant to O.R.C. § 2323.52(F)(1). (Attached hereto and identified as A4-10.)
10. On December 13, 2006 the Honorable James L. Kimbler, Judge of the Medina County Court of Common Pleas granted Relator leave to commence the civil complaint for breach of contract against the City of Rittman Cemetery in the Court of Common Pleas, Wayne County, Ohio. (Attached hereto and identified as A-11).
11. On December 18, 2006 Relator commenced the approved civil complaint against the City of Rittman Cemetery with the Wayne County Court of Common Pleas and the complaint was served upon the City of Rittman Cemetery on June 7, 2007. (Attached hereto and identified as A-3).
12. On June 12, 2007 the City of Rittman Cemetery answered the complaint with one defense "the complaint fails to state a cause for action where relief can be granted and one counter claim seeking Relator declared a vexatious litigator pursuant to O.R.C. § 2323.52(A)(3). (Attached hereto and identified as A-12).
13. On June 19, 2007 Relator moved the City of Rittman Cemetery with his first request for interrogatories, production of documents and request for admissions as part of discovery. (Attached hereto and identified as A-2).

14. On June 22, 2007 Relator moved the Wayne County court of common with a motion to dismiss the counter-claim by the cemetery pursuant to Civil Rule 12(B)(6). (Attached hereto and identified as A- 14).
15. On July 19, 2007 the City of Rittman Cemetery defaulted the Realtor's first set of admissions filed on June 19, 2007 admitting the City of Rittman Cemetery has breached the contract between the parties.
16. On September 5, 2007 the Wayne County trial court issued a succinct judgment entry that granted the City of Rittman Cemetery motion for summary judgment and denied the Relator's motion for summary judgment when genuine issues of material fact remain to be litigated. (Attached hereto and identified as A- 20).
17. On September 13, 2007 Relator filed a motion for leave with the court of appeals pursuant to O.R.C. § 2323.52(F)(2) since the court of appeals will not accept any proceedings or filings by Relator without leave of the court.<sup>1</sup> (Attached hereto and identified as A- 21).
18. On November 15, 2007 Respondents Judge Slaby and Judge Dickinson issued a judgment entry that denied Relator his right to an appeal after Judge Kimbler granted leave pursuant to O.R.C. § 2323.52(F)(1). (Attached hereto and identified as A- 25).

### **III. RELEVANT STATUTE AND RULE**

19. Relator incorporates by reference paragraphs 1 through 18 of this complaint as if completely rewritten herein.

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1. As a side note Relator was not ordered by the March 17, 2005 judgment entry to seek leave with the court of appeals pursuant to O.R.C. § 2323.52(F)(2).

20. Article I, Section 16 of the Ohio Constitution guarantees, every injured party a remedy by due course of law and shall have justice administered without denial or delay. Hence, the rights protected in Section 16, Article I of the Ohio Constitution extend to an appeal. *Moldovan v. Cuyahoga Cty Welfare Dept.* (1986), 25 Ohio St.3d 293, 294, 496 N.E.2d 466.
21. Ohio Revised Code (“O.R.C.”) § 2505.02 and § 2505.03 defines final order and the substantial rights to an appeal from an inferior court’s order.
22. O.R.C. § 2505.04 defines an appeal is perfected when a written notice of appeal, in the case of an appeal of a final order, judgment, or decree of a court, in accordance with the Rule of Appellate Procedure or the Rules of Practice of the Supreme Court.
23. O.R.C. § 2505.07 states an appeal of right shall be perfected within thirty days.
24. Ohio Appellate Rule (“App.R.”) 3 and 4 articulates the proper procedure to perfect a timely appeal allowing Respondent’s jurisdiction to entertain the merits of an appeal.
25. O.R.C. § 2323.52 provides direction concerning a vexatious litigator and the procedure that is required before permitting a labeled vexatious litigator to commence or continue a civil action and the time to perfect an appeal is tolled during the pending screening process in O.R.C. § 2323.52(F)(2). *Mayer v. Bristow* (2000), 91 Ohio St.3d 3, 740 N.E.2d 656.
26. O.R.C. § 2323.52(F)(1) requires Relator to seek leave with the Ohio screening court to seek leave before commencing a civil complaint in Ohio’s trial courts.

27. The maxim of law in the State of Ohio, a court of record must always speak through its journal entry. *Hernandez v. Kelly* (2006), 108 Ohio St.3d 395, 844 N.E.2d 301, 306 2006-Ohio-126 (“It is axiomatic that a court of record speaks only through its journal entries.” [Internal quotation marks omitted])

**IV. CLEAR LEGAL RIGHT & CLEAR  
LEGAL DUTY TO PERFORM**

28. Relator incorporates by reference paragraphs 1 through 27 of this complaint as if completely rewritten herein.
29. Relator has a substantial right to appeal the September 5, 2007 journal/judgment entry granting the City of Rittman Cemetery summary judgment especially after Judge Kimbler permitted Relator to commence the original civil action with the Wayne County Court of Common Pleas. *Atkinson v. Grumman Corp.* (1988), 37 Ohio St.3d 80, 84, 523 N.E.2d 851.
30. The standard of appellate review and law of the case for a summary judgment is *de novo* review. *Cleveland Elec. Illum. Co. v. Pub. Util. Comm.* (1996), 76 Ohio St.3d 521, 523, 668 N.E.2d 889; and *Doe v. Shaffer* (2000), 90 Ohio St.3d 388, 738 N.E.2d 1243.
31. Respondents are refusing Relator his guaranteed right of appeal a final order.
32. The original trial court issued a final order on September 5, 2007 and adjudicated the complaint was not frivolous or malicious.
33. Relator has a guaranteed constitutional right to due process, allowing any injury be entertained by an Ohio Court of record without denial or delay.

34. Respondents have a duty to every Ohio citizen the availability of an appeal or original action in the Counties of Summit, Medina, Wayne and Lorain without denial or delay. Relator is not required by the judgment entry to seek leave pursuant to O.R.C. § 2323.52(F)(2) since it was not imposed by the original screening court in Medina County, Ohio.
35. Respondents have a constitutional duty to protect Relator's due process rights pursuant to Article I, Section 16 of the Ohio Constitution.
36. Respondents have a constitutional and statutory duty to follow the maxim of law, a court of record only speaks through the judgment/journal entry.

#### **V. ADEQUATE REMEDY AT LAW**

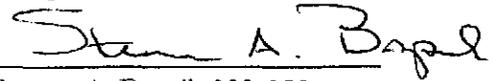
37. Relator incorporates by reference paragraphs 1 through 36 of this complaint as if completely rewritten herein.
38. No remedy of law is available to address Respondent's November 15, 2007 judgment entry that denied leave pursuant to O.R.C. § 2323.52(F)(2).
39. The law of the case in *Mayer v. Bristow* (2000), 91 Ohio St.3d 3, 740 N.E.2d 656 allows a writ of mandamus to address an inferior court's judgment that denies leave pursuant to O.R.C. § 2323.52(F).

#### **VI. PRAYER FOR RELIEF**

40. WHEREFORE, Relator so prays this Court:
  - a. Issue a peremptory writ of mandamus to compel Respondents to allow Relator to appeal the September 5, 2007 judgment entry from the Wayne County court of common pleas according to Ohio law

b. In the event this Court does not issue a peremptory writ compelling Respondents to allow Relator his rights of an appeal the September 5, 2007 final order since genuine issues of material facts remain for litigation; issue an alternative writ, setting forth a schedule for the presentation of evidence as well as a briefing schedule because of the importance of the issue raised and the impact and effect of any such ruling on proceedings in the courts of this State.

Respectfully submitted,



Steven A. Bozsik 389-250

RiCI

1001 Olivesburg Rd.

P.O. Box 8107

Mansfield, Ohio 44901-8107

STATE OF OHIO )  
 )  
COUNTY OF RICHLAND )

SS: AFFIDAVIT OF VERITY FOR STEVEN A. BOZSIK

I Steven A. Bozsik, affiant and Relator being duly sworn hereby deposes the facts are based from personal knowledge, setting forth the facts and exhibits affirmatively show affiant (Relator) is competent to testify to all matters stated in the original complaint in mandamus compelling Respondents to allow affiant his direct appeal rights from a final order issued by the Wayne County court of common pleas issued on September 5, 2007.

Steven A. Bozsik

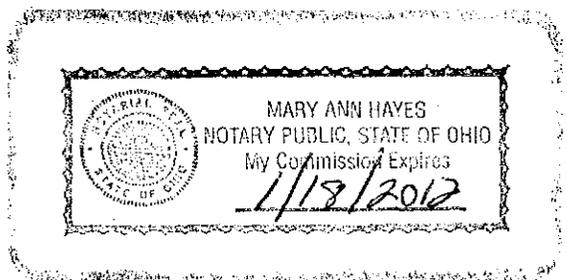
Steven A. Bozsik

NOTARY PUBLIC

The foregoing has been sworn, affirmed and subscribed before me on this 24 day of December, 2007.

Mary Ann Hayes

Notary





7. On June 12, 2007 the City of Rittman Cemetery answered the complaint with one defense "the complaint fails to state a cause for action where relief can be granted and one counter claim seeking Relator declared a vexatious litigator pursuant to O.R.C. § 2323.52(A)(3).
8. On June 19, 2007 Relator moved the City of Rittman Cemetery with his first request for interrogatories, production of documents and request for admissions as part of discovery.
9. On June 22, 2007 Relator moved the Wayne County trial court with a motion to dismiss pursuant to Civil Rule 12(B)(6) the City of Rittman Cemetery counter claim since the original complaint was approved for filing under O.R.C. § 2323.52(F)(1) by Judge Kimbler before commencing the complaint.
10. On July 19, 2007 the City of Rittman Cemetery defaulted the Realtor's first set of admissions filed on June 19, 2007 admitting the City of Rittman Cemetery has breached the contract between the parties.
11. Both parties moved the trial court for summary judgment and the Wayne County trial court set a cut-off date for a non-oral hearing on September 1, 2007.
12. On September 5, 2007 the Wayne County trial court issued a succinct judgment entry that granted the City of Rittman Cemetery motion for summary judgment and denied the Relator's motion for summary judgment. The trial court also granted the Relator's motion to dismiss the City of Rittman Cemetery's counter claim pursuant to Civ.R. 12(B)(6) making the motion for summary judgment filed by the City of Rittman Cemetery moot.

13. On September 13, 2007 Relator filed a motion for leave with the court of appeals pursuant to O.R.C. § 2323.52(F)(2) since the court of appeals will not accept any proceedings or filings by Relator without leave of the court.
14. On November 15, 2007 Respondents issued a judgment entry that denied Relator his guaranteed right to an appeal after the screening court pursuant to O.R.C. § 2323.52(F)(1) granted leave. A colorful claim existed for the complaint and the City of Rittman Cemetery created genuine issue of material fact from the admissions during the discovery of the original complaint.

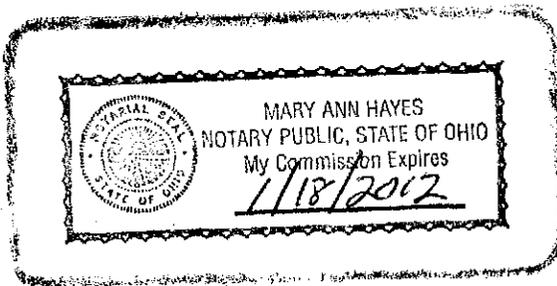
AFFIANT FURTHER SAYETH NAUGHT.

  
\_\_\_\_\_  
Steven A. Bozsik

**NOTARY PUBLIC**

The foregoing has been sworn, affirmed, and subscribed before me by Steven A. Bozsik on this 24 day of December 2007.

  
\_\_\_\_\_  
Notary



CRTR5925

## Summary

<u>Case Number</u>	<u>Status</u>	<u>Judge</u>
06-CV-0849	OPEN	Wiest, Mark K
<u>In The Matter Of</u>		<u>Action</u>
BOZSIK, STEVEN A vs. CITY OF RITTMAN CEMETERY		OTHER CIVIL
<u>Party</u>		<u>Attorneys</u>
BOZSIK, STEVEN A	PLNTF	
CITY OF RITTMAN CEMETERY	DFNDT	
<u>Opened</u>	<u>Disposed</u>	<u>Case Type</u>
12/19/2006	UNDISPOSED	CIVIL(C)
<u>Comments:</u>		

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
1	09/18/07	TRACK CASE OUT TO JUDGE WIEST		0.00	0.00
2	09/18/07	FILED MOTION TO STAY THE EXECUTION OF THE JUDGMENT ENTRY (FILED BY PLFT/ STEVEN BOZSIK)		0.00	0.00
3	09/11/07	COURTESY LETTER WAS ISSUED: (N) NOTICE 1 FOR A/R Sent on: 09/11/2007 12:55:12		0.00	0.00
4	09/05/07	JOURNAL ENTRY THIS IS RULING ON CROSS MOTIONS FOR SJ, PLNTF MOTION IS DENIED & DFDNT MOTION GRANTED, PLNTF AMENDED COMPLAINT IS DISMISSED W/PREJ; PLNTF MOTION TO DIMISS DFDNTS COUNTERCLAIM IS GRANTED; PLNTF HAS ALREADY BEED DECLARED A VEXATIOUS LITIGATOR IN MEDINA CNTY & HAD JUDICIAL APPROVAL TO FILES THIS SUIT, COSTS TO PLNTF COPY BOZSIK; CITY RITTMAN 89-214-89		2.00	2.00
5	09/05/07	TRACK-CASE IN CLERK'S OFFICE		0.00	0.00
6	08/31/07	TRACK CASE OUT TO JUDGE WIEST		0.00	0.00
7	08/30/07	FILED REPLY TO PLNTF MSJ W/NOTICE OF SERVICE		0.00	0.00
8	08/24/07	JOURNAL ENTRY ON PLNTF MOTION TO AMEND AND SUPPLEMENT MSJ, COURT GRANTS MOTION COPY CITY OF RITTMAN; BOZSIK 89-44-89		2.00	2.00
9	08/24/07	TRACK-CASE IN CLERK'S OFFICE		0.00	0.00
10	08/08/07	MOTION FILED FOR LEAVE TO AMEND AND SUPPLEMENT MSJ OUT TO JUDGE WIEST		0.00	0.00

CRTR5925

## Summary

06-CV-0849 BOZSIK, STEVEN A vs. CITY OF RITTMAN CEMETERY

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
11	08/03/07	MOTION FOR SUMMARY JUDGMENT	0.00	0.00
12	08/02/07	JOURNAL ENTRY MOTION FOR LEAVE TO FILE SJ IS GRANTED; MOTION TO ADMIT DENIED; DEFNT SHALL RESPOND TO MSJ ON/BEF 9/1/07 COPY CITY RITTMAN; BOZSIK 88-216-88	2.00	2.00
13	08/02/07	TRACK-CASE IN CLERK'S OFFICE	0.00	0.00
14	07/27/07	MOTION FILED FOR LEAVE TO MOVE FOR JS	0.00	0.00
15	07/25/07	TRACK CASE OUT TO JUDGE WIEST	0.00	0.00
16	07/25/07	MOTION TO ADMIT ADMISSIONS BY DEFAULT, RESPONSE TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT	0.00	0.00
17	07/19/07	JOURNAL ENTRY 9/1/07 CUTOFF FOR FILING BRIEFS ETC COPY BOZSIK; CITY OF RITTMAN 87-489-87	2.00	2.00
18	06/22/07	MOTION FILED TO DISMISS COUNTERCLAIM	0.00	0.00
19	06/19/07	TRACK CASE OUT TO JUDGE WIEST	0.00	0.00
20	06/19/07	MOTION FILED BY PLNTF TO WAIVE ELECTRONIC FILING AND SERVICE; REQ FOR 1ST SET ADMISSIONS OF RITTMAN CEMENTARY; NOTICE OF SERVICE	0.00	0.00
21	06/13/07	ANSWER FILED BY DEFENDANT CITY OF RITTMAN TO COMPL & COUNTERCLAIM & MOTION	0.00	0.00
22	06/11/07	CERTIFIED MAIL RETURNED FOR: CITY OF RITTMAN CEMETARY 06/07/07 SIGNED FOR BY: KRIS FETTER	0.00	0.00
23	06/05/07	CERT MAIL SENT TO: CITY OF RITTMAN (CHANGED ADDRESS)-AMENDED COMPLAINT	5.38	5.38
24	06/05/07	TRACK-CASE IN CLERK'S OFFICE	0.00	0.00
25	03/27/07	TRACK CASE OUT TO JUDGE WIEST	0.00	0.00
26	03/14/07	JOURNAL ENTRY ON PNLTF MOTION TO AMEND COMPLAINT GRANTED; AMENDED COMPL FILED COPY BOZSIK; CITY OF RITTMAN 84-292-84	2.00	2.00
27	03/14/07	TRACK-CASE IN CLERK'S OFFICE	0.00	0.00

CRTR5925

## Summary

06-CV-0849 BOZSIK, STEVEN A vs. CITY OF RITTMAN CEMETERY

No.	Date of	Pleadings Filed, Orders and Decrees Journal Book-Page-Nbr	Ref Nbr	Amount Owed/ Amount Dismissed	Balance Due
28	02/28/07	TRACK CASE OUT TO JUDGE WIEST		0.00	0.00
29	02/28/07	MOTION FILED TO AMEND COMPLAINT		0.00	0.00
30	02/27/07	CERTIFIED MAIL FAILED ATTEMPTED NOT KNOWN		2.00	2.00
31	02/21/07	CERTIFIED MAIL FAILED ATTEMPTED - NOT KNOWN ON CITY OF RITTMAN CEMETERY C/O DIRECTOR OF PUBLIC SERVICE		2.00	2.00
32	02/20/07	CERT MAIL SENT		4.88	4.88
33	02/20/07	SUMMONS ISSUED BY CERTIFIED MAIL  (N) SUMMONS FOR CIVIL Sent on: 02/20/2007 08:21:18		2.00	2.00
34	02/16/07	TRACK-CASE IN CLERK'S OFFICE		0.00	0.00
35	02/15/07	TRACK CASE OUT TO JUDGE WIEST		0.00	0.00
36	02/15/07	MOTION FILED FOR TRO W/AFFIDAVIT NOTE: RETURNED COMPLAINT W/SIGNATURE AS REQ, HOWEVER, FILED SEVERAL OTHER PLEADINGS ALL W/NO SIGNATURE, SENT BACK TO BE SIGNED.		0.00	0.00
37	12/22/06	TRACK-CASE IN CLERK'S OFFICE		0.00	0.00
38	12/20/06	TRACK CASE OUT TO JUDGE WIEST		0.00	0.00
39	12/19/06	MOTION FILED FOR LEAVE TO FILE IN WYN CNTY COURT-THROUGH MEDINA COURT MOTION GRANTED PER JUDGE KIMBLER		0.00	0.00
40	12/18/06	CIVIL COMPLAINT FILED		114.00	114.00
41	03/27/06	MOTION TO SERVE DEFENDANT		0.00	0.00
Totals By: COST				140.26	140.26
INFORMATION				0.00	0.00
*** End of Report ***					

**IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO**

In Re: STEVEN A. BOZSIK

Judge JAMES L. KIMBLER

**MOTION FOR LEAVE OF THE  
COURT PURSUANT TO R.C.  
2323.52(F)(1)**

Now comes Steven A. Bozsik, (“movant”), hereby seeks leave of the Court pursuant to RC 2323.52(F)(1) to commence a civil action with the Common Pleas Court of Wayne County, Ohio. The movant is required by law, through an Order from this Court, issued on March 17, 2005, to seek leave under R.C. § 2323.52(F)(1) before commencing a civil action in an Ohio trial court..

The civil action attached hereto, incorporated herein is required against the City of Rittman Cemetery, c/o The Director of Public Service who has statutory responsibility of the city owned property under RC 759.01 et seq. The Director of Public Service fails to comply with the purchase contract, providing the Plaintiff his rightfully owned “Certificate of Burial Rights;” even after, the movant made proper payment under the conditions to the purchase contract.

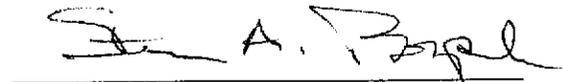
The Court of Common Pleas for Wayne County, Ohio has jurisdiction and is the proper venue, since the City of Rittman Cemetery is located within the boundaries of the County of Wayne, in the State of Ohio. Unless this Court grants leave, the Plaintiff will be denied his due process under Article I, Section 16 to the Ohio Constitution; moreover, the Plaintiff will have no

remedy to correct the injury being caused by the Defendant breaching a purchase contract which Plaintiff satisfied.

This Court is required under law to deny the motion, unless the movant can show the Court, the proposed civil action is not abuse of judicial process and the movant is entitled to probable relief. Attached to the proposed complaint, are copies of the purchase contract and payment receipt, that purports the movant satisfying his contractual responsibility mandating the Defendant through the Director of Public Service for the City of Rittman, Ohio satisfy his contractual and statutory responsibility to the purchase contract of the parties.

Wherefore, movant prays the Court will grant leave under RC 2323.52(F)(1) allowing the movant permission to commence the civil action with the Common Pleas Court of Wayne County, Ohio.

Respectfully submitted,



Steven A. Bozsik 389-250  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, Ohio 44901-8107

**IN THE COURT OF COMMON PLEAS  
WAYNE COUNTY, OHIO**

**STEVEN A. BOZSIK** 389-250

No. \_\_\_\_\_

1001 Olivesburg Rd.

P.O. Box 8107

Mansfield, Ohio 44901-8107

Plaintiff

-vs-

**CITY OF RITTMAN CEMETERY**

C/o Director of Public Service

City of Rittman, Ohio

12 N. Main Street

Rittman, Ohio 44270

Defendant

Case

Judge \_\_\_\_\_

**COMPLAINT**

Type: Breach of Contract

**INJUNCTION RELIEF REQUESTED**

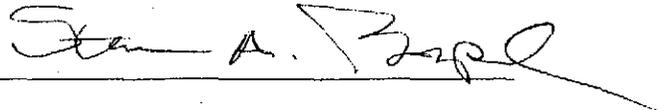
1. Plaintiff, STEVEN A. BOZSIK entered into a purchase contract for two- (2) burial plats on December 3, 1999 with the City of Rittman Cemetery, attached hereto, incorporated herein as Exhibit "A".
2. Defendant, CITY OF RITTMAN CEMETERY is a city owned Cemetery by the City of Rittman, Ohio, statutorily supervised by the Director of Public Service for the City of Rittman under Ohio Revised Code 759.01 et seq.
3. On or about December 5, 1999, Carol Bozsik was interned in one of the two burial plats after the purchase contract was agreed with between the parties.
4. Plaintiff satisfied payment of the purchase agreement identified in Exhibit "A" in February of 2000, attached hereto, incorporated herein, as Exhibit "B".
5. The Defendant, CITY OF RITTMAN CEMETERY, through the Director of Public Service has failed to provide the ownership "Certificate of Burial Rights"

to the Plaintiff for both burial plats after full payment was rendered and the Plaintiff has made demand for the Certificate of Burial Rights.

WHEREFORE, Plaintiff demand's Judgment against the Defendant for the following:

- a. Defendant issue to the Plaintiff his Certificate of Burial Rights as stated and agreed in the purchase contract between the parties.
- b. Defendant is restrained from any internment in the purchase contract-burial plat that was purchased by the Plaintiff on December 3, 1999 unless approved by the Plaintiff or his executrix.
- c. Defendant pays the Plaintiff the appropriate amount of punitive damages as deemed proper by the Court, resulting from the breach of the purchase contract.
- d. Any additional relief required.

Respectfully submitted,



Steven A. Bozsik 389-250  
P.O. Box 8107  
Mansfield, Ohio 44901

*Pro se*

THE RITTMAN CEMETERY

Rittman, Ohio

Wayne Co.

Interment Record

Interment No. \_\_\_\_\_

Name.. Carol E. Bozsik Age.. 33 Sex...F Permit # 2295

Date of Death.. 11/30/99 Birthplace.... Wadsworth, OH

Date Interred.. 12/04/99 Place of Death.. Wadsworth, Ohio

Cause of Death .. \_\_\_\_\_

Last Residence.. 7965 Beach Rd., Wadsworth OH 44281

Father.. John F. Burkhart

Mother.. Bernadine Crum

Funeral Director.. Gillman Funeral Home, Rittman, Ohio

Lot No.. 56

Sec... G

Grave... 3

Casket Container.... Clark 12 Ga. Galv. Steel

Vault Company... Baumgardner Vault Co.

Lot & Burial Fee \$1,300.00 Cash \$ -0- Balance Due \$1,300.00

Grave Ordered By.. Steven A. Bozsik

Address.. 7965 Beach Rd., Wadsworth OH 44281

-----  
\$ 1,300.00

December 3, 1999

30 Days after date for value received I promise to pay to the order of The City of Rittman \$1,300.00 with interest at the rate of 6 per cent per annum at City Hall and I hereby authorize any Attorney-at-law to appear in any Court of Record in the United States, after the above obligation becomes due, and waive the issuing and service of process and confess a judgement against Me in favor of the holder hereof for the amount then appearing due, together with costs of suit, and thereupon to release all errors and waive all rights of appeal.

Signature

Steven A. Bozsik

Address... 7965 Beach Rd., Wadsworth, OH 44281

A-9  
EXHIBIT A-1

FOR DEPOSIT ONLY  
 PAY TO THE ORDER OF  
 CHATELAIN VALLEY BANK  
 CITY OF RITTMAN  
 GENERAL FUND

2015 FEB 01

0104252414

042000096  
 4217294  
 000000000

0104252414

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER

WESTERN SOUTHERN LIFE AND ACCIDENT COMPANY  
 PNC BANK, NA  
 CINCINNATI, OH

PAY TO THE ORDER OF  
 POLICY 10  
 DIST 00005004 07

AMOUNT OF CHECK  
 \$1,300.00

01132690 0

THE RITTMAN CEMETERY  
 RITTMAN OH 44270

01132690 00000130000

0043301622: 10056155

# RITTMAN CEMETERIES

RITTMAN, OHIO

No 1410

## Certificate of Burial Rights

The **COPY** Rittman, a municipal corporation of the State of Ohio, in consideration of the sum of Nine hundred .....  
(\$ 900.00 ..... ) Dollars, in hand paid, one fifth of which amount shall be placed with the permanent Cemetery endowment fund and  
four-fifths with the general funds of the City, hereby certifies that

Carol Bozsik family c/o Karen Jordan 344 Nautilus Lane, Rittman, OH 44770  
is vested with burial rights in Graves Nos. 3 & 4 ..... , Lot No. 56 ..... Section No. 6 ..... as shown on the plat of  
grounds of The Rittman Cemetery and The Pioneer Memorial Cemetery, in the Township of Milton, County of Wayne, State of Ohio, subject  
however, to the following terms, conditions and limitations, to-wit:

1. By virtue of this certificate, the holder has only the right and privilege to use the burial area involved, for the interment of dead bodies  
or parts thereof, in accordance with the rules and regulations of the Cemetery, as now in effect or hereafter to be adopted, all of which are  
hereby made a part of this certificate, by reference, with the same force and effect as if herein set forth in their entirety.

2. The Burial Rights, evidenced by this certificate, include the privilege of the holder or those entitled to act after his or her death, to  
authorize interment therein and to erect memorials, **COPY** in accordance with the rules and regulations of the Cemetery.

3. By virtue of this Certificate permanent care shall be provided for the burial area.

4. The Burial Rights of the holder do not include the privilege of doing or having done any work whatsoever in the Cemetery. The Ceme-  
tery authorities shall retain exclusive control of all facilities and features within the Cemetery grounds, both as to maintenance, replacement,  
continuation, alteration and/or removal.

5. The Cemetery authorities shall have exclusive control of the planting, care and maintenance of all grass, shrubbery and trees. They  
shall retain the right of ingress and egress over the burial area involved, and the right to use such area, temporarily, for any activity necessary  
for the proper functioning of the Cemetery, as such.

6. In case of a breach by the holder or assigns of any **COPY** terms, limitations or conditions hereinabove set forth, or of the rules and regu-  
lations of the Cemetery, now in force or which may be hereafter operative, the burial rights hereby evidenced shall revert to The Rittman  
Cemetery who may immediately reenter and repossess said premises, and hold the same as if this certificate has never been issued. No waiver  
of the right to reenter and repossess shall revoke or impair such right of reentry and repossession for any subsequent breach of any of the  
terms, conditions and limitations of this certificate, nor operate as a waiver other than such specific breach.

In witness whereof, the City of Rittman, by its said Officers, has caused its name to be signed and its corporate seal affixed this  
...First..... day of March..... A.D. 2000

Signed, and acknowledged in presence of  
Tandy A. Spald  
Marilyn J. Gutterman

State of Ohio  
County of Wayne [ ss.

By Robert Kellogg  
City Manager

Attest: Mollie Watson  
Clerk of Council

Before me, a Notary Public in and for said County, personally came Mollie Watson, .....  
..... Clerk of Council ..... and Robert Kellogg, City Manager .. who  
severally acknowledged they are the respective Officers above designed, of the City of Rittman; the execution of  
the foregoing Certificate of Burial Rights to be their voluntary act on behalf of the City and the corporate act and  
deed of said City.

In testimony whereof, I hereunto set my hand and seal this ..... day of ..... A.D. 19.....

Notary Public

**COPY**

**COPY**

COMMON PLEAS COURT

06 DEC 13 AM 9:12

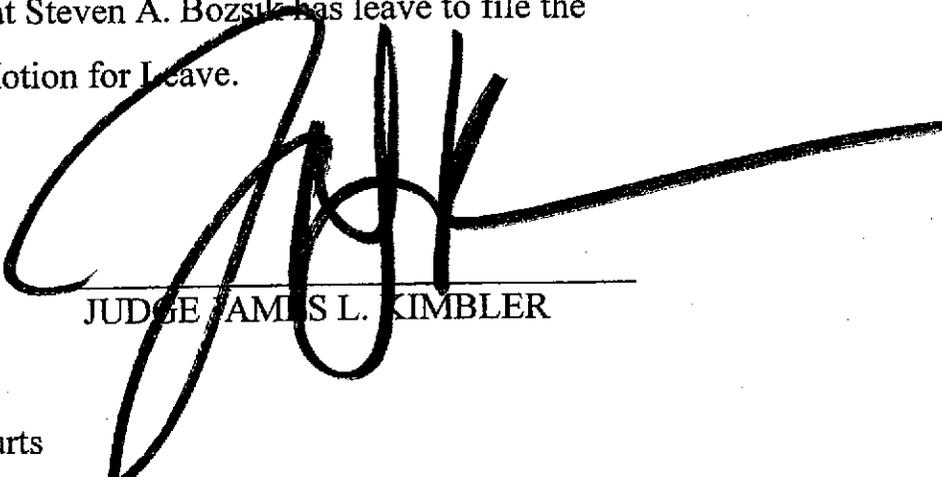
FILED  
KATHY FORTNEY  
MEDINA COUNTY  
CLERK OF COURTS

**IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO**

**In Re: STEVEN A. BOZSIK**

On December 12, 2006, Steven A. Bozsik filed a Motion for Leave of the Court Pursuant to R.C. 2323.52(F)(1) to commence a civil action in the Common Pleas Court of Wayne County, Ohio on December 13, 2006. Said Motion is granted.

**IT IS ORDERED** that Steven A. Bozsik has leave to file the Complaint attached to the Motion for Leave.



JUDGE JAMES L. KIMBLER

Copy:  
Wayne County Clerk of Courts  
107 West Liberty Street  
Wooster, OH 44691

Steven Bozsik 389-250  
Richland Correctional Institution  
P.O. Box 8107  
Mansfield, OH 44901

A-11

**IN THE COURT OF COMMON PLEAS  
WAYNE COUNTY, OHIO**

**STEVEN A. BOZSIK**

)

**CASE NO. 06-CV-0849**

Plaintiff

)

vs.

)

**CITY OF RITTMAN CEMETERY**

)

**ANSWER TO COMPLAINT &  
COUNTERCLAIM &  
MOTION**

Defendant

)

ANSWER

1) The Defendant, City of Rittman, denies the allegations set forth in Paragraph 1, 2, 4, 5, 6, 7, 9, 10 and as it relates to Paragraph 3 of the Complaint denies that any contract was agreed upon between the parties.

2) The Defendant admits the allegations set forth in Paragraph 8 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

3) The Complaint fails to state a cause of action upon which relief can be granted.

COUNTER CLAIM

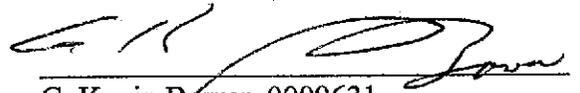
4) Pursuant to Ohio Revised Code Section 2323.52 the Defendant, City of Rittman, alleges that the Plaintiff be deemed a vexatious litigator and the within cause be dismissed and pursuant to said statute that an Order issue prohibiting him from further filings against the City of Rittman on the subject of cemetery burial plots.

A-12

MOTION

5) Pursuant to Civil Rule 56 and the Exhibits incorporated herein the Defendant moves for summary judgment in its favor and that the within cause be dismissed with prejudice.

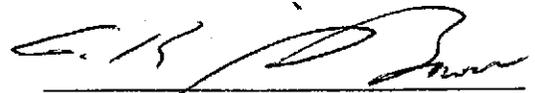
Wherefore, The Defendant, City of Rittman, prays that the Complaint against it be dismissed and that it go hence without cost and delay and for Judgment in its favor against the Plaintiff upon its counterclaim.



G. Kevin Bower 0009631  
19 N. Main Street, Suite B  
Rittman, Ohio 44270  
(330) 927-5100  
Attorney for City of Rittman

**PROOF OF SERVICE**

I certify that a copy of the foregoing Answer was mailed by regular U.S. Mail this 13 day of June, 2007 to Steven A. Bozsik, #389-250, 1001 Olivesburg Road, P.O. Box 8107, Mansfield, Ohio 44901.



G. Kevin Bower  
Attorney for City of Rittman

## MEMORANDUM IN SUPPORT

### **I INTRODUCTION**

On or about June 13, 2007, Defendant (City of Rittman Cemetery) filed an answer<sup>1</sup> to the original complaint with a counterclaim and motion to label Plaintiff a vexatious litigator pursuant to Ohio Revised Code § 2323.52(A)(3). Attached to the counterclaim and motion, Defendant included a sworn affidavit by Mary Jane Letherman, Cemetery Clerk for the City of Rittman Cemetery to lay a foundation or *prima facie* case to label Plaintiff a vexatious litigator.

### **II SWORN AFFIDAVIT BY CEMETERY CLERK**

First and foremost Plaintiff objects to the affidavit containing hearsay testimony and this Court is urged to find the sworn affidavit does not satisfy Ohio Law and must be stricken, or at a minimum the paragraphs containing the hearsay testimony should be stricken by this Court.

The following paragraphs aver hearsay testimony according to Ohio Evidence Rule 801 through Rule 807.

On or about February 15, 2000, the decedent's sister, Karen Jordon, contacted me at City Hall and purchased the cemetery lots in question through a Western and Southern Life Insurance Policy as reflected in the attached Exhibit "B".

Subsequently, on or about March 1, 2000, pursuant to Exhibit "C" and upon the instruction of Karen Jordon who paid for the cemetery lots a Certificate of Burial Rights was issued in the name of the decedent's family in care of Karen Jordon.

Evidence Rule 804(B)(1) permits the admissibility at trial of former testimony taken at a previous trial upon a showing that the witness is unavailable. *State v. Kearnins* (1984), 9 Ohio

St.3d 228, 460 N.E.2d 245. In the affidavit by the Cemetery Clerk there is no *prima facie* case or foundation the statements by Ms. Jordon where made by her and Plaintiff has no availability to cross-examine Ms. Jordon since she is deceased preventing Plaintiff from adequate due process.

Therefore, the affidavit containing hearsay testimony violates the Ohio Rules of Evidence and must be stricken.

### III. COUNTER CLAIM - VEXATIOUS LITIGATOR

The Defendant's counter claim seeks to have this Court issue an Order declaring Plaintiff a vexatious litigator pursuant to O.R.C. § 2323.52(A)(3). Defendant alleges Plaintiff Bozsik has no claim that warrants relief and this civil action is just a "charlatan" attempt to deceive this Court and cause the City of Rittman, Ohio<sup>2</sup> prejudice with unnecessary harassment. Upon the following, this Court is urged to find Defendant's counter claim not well taken. Plaintiff was granted leave pursuant to R.C. § 2323.52(F)(1) prior to the Clerk docketing the complaint and the complaint passed the screening process according to Ohio law.

#### a. Standard of Review

As aptly explained by the Ohio Supreme Court in *Mayer v. Bristow* (2000) 91 Ohio St.3d 3, 740 N.E.2d 656, 665, citing *Cent. Ohio Transit Auth. v. Timson* (10<sup>th</sup> Dist. 1998), 132 Ohio App.3d 41, 724 N.E.2d 458 it was opined as the following:

"The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial court's of this state. Such conduct clogs the court

---

<sup>1</sup> The City of Rittman Cemetery denied the allegations by the Plaintiff in the complaint with a counter claim the Plaintiff should be labeled a vexatious litigator.

<sup>2</sup> The City of Rittman, Ohio owns the Rittman Cemetery according to Ohio law.

dockets, results in increased cost, and oftentimes is a waste of judicial resources-resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration or proper litigation.”

“The vexatious litigator statute is not designed, nor does it operate to preclude vexatious litigators from proceeding forward on their legitimate claims, Instead it **establishes a screening mechanism under which the vexatious litigator can petition the declaring court**, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless. Thus, R.C. 2323.52(F) provides that the court of common pleas is precluded from granting leave to the vexatious litigator unless it is ‘satisfied that the proceedings or application are **not an abuse of process of the court in question and there are reasonable grounds for the proceedings or application**’ (Emphasis added).

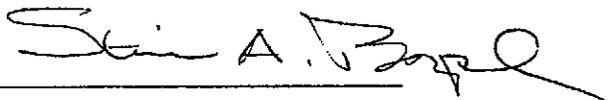
Accordingly, the labeled vexatious litigator must seek leave with the issuing court labeling the party a vexatious litigator. Obviously the General Assembly determined the issuing court was in a better position to review the proposed civil action; otherwise, the General Assembly would have required the vexatious litigator to seek leave with the court he or she seeks to commence the civil action.

Plaintiff has not commenced a frivolous civil action with this Court and Defendants attempt to label Plaintiff a vexatious litigator lacks merit. Prior to commencing the instant case, Plaintiff moved the Honorable James L. Kimbler, Judge of the Medina County Court of Common Pleas pursuant to R.C. § 2323.52(F)(1) seeking leave to commence the instant case. The record purports Judge Kimbler’s judgment entry granting Plaintiff leave pursuant to R.C. § 2323.52(F)(1) and the Clerk of this Court commenced this civil action accordingly.

WHEREFORE, this Court is required by law to dismiss Defendant’s counter claim since Judge Kimbler granted leave pursuant to R.C. § 2323.52(F)(1). The journal entry granting leave

should assure this Court the complaint is not frivolous and not an attempt to harass the City of Rittman, Ohio, or, in the alternative, City of Rittman Cemetery.

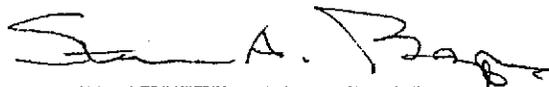
Respectfully submitted,



Steven A. Bozsik 389-250  
1001 Olivesburg Rd.  
P.O. Box 8107  
Mansfield, Ohio 44901-8107

**CERTIFICATE OF SERVICE**

The foregoing motion has been served upon Mr. G. Kevin Bower; Law Director for the City of Rittman, Ohio at 19 N. Main Street, Suite B; Rittman, Ohio 44270 on this 20th day of June, 2007.



Steven A. Bozsik

**STAMP "FILED"  
AND RETURN**

**IN THE COURT OF COMMON PLEAS  
WAYNE COUNTY, OHIO**

FILED  
COMMON PLEAS COURT  
WAYNE COUNTY, OHIO

2007 JUN 22 AM 8 37

TIM NEAL  
CLERK OF COURTS

**STEVEN A. BOZSIK**

Case No. 06-cv-0849

*Plaintiff*

vs

Judge Mark K. Wiest

**CITY OF RITTMAN CEMETERY**

*Defendant*

**MOTION TO DISMISS DEFENDANTS COUNTERCLAIM  
PURSUANT TO CIV. R. 12(B)(6)**

Now comes Plaintiff Steven A. Bozsik, hereby respectfully moves this Honorable Court to dismiss the Defendant's counter claim and motion pursuant to the Ohio Rules of Civil Procedure 12(B)(6) for failure to state a claim where relief can be granted.

Upon the following memorandum in support this Court is urged to find Defendant's claim lacking merit since the instant case has been screened by the Honorable James Kimbler, Judge of the Medina County Court of Common Pleas. Judge Kimbler screened Plaintiff's complaint and granted the Plaintiff leave pursuant to Ohio Revised Code § 2323.52(F)(1); therefore, the complaint has reasonable grounds and is supported by Ohio law.

Respectfully submitted,



Steven A. Bozsik 389-250

P.O. Box 8107

Mansfield, Ohio 44901-8107

IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO  
COMMON PLEAS COURT  
WAYNE COUNTY, OHIO

STEVEN A. BOZSIK

Plaintiff

2007 JUL 19 8:11 AM CASE NO. 06-CV-0743

0849

vs.

TIM NEAL  
CLERK OF COURTS

CITY OF RITTMAN CEMETERY : ORDER

Defendant :

On June 13, 2007, defendant filed a motion for summary judgment. The motion will be decided by the court without an oral hearing based upon the pleadings, affidavits, answers to interrogatories, depositions, briefs of counsel and other proper supporting documents. September 1, 2007 ("time fixed for hearing" - Rule 56[C]) will be the cut-off date for filing briefs, affidavits, and other supporting documents. If any party wishes an extension of the "hearing" date, they must show good cause and must contact the court within five (5) days of the date this entry is signed. Copies of this entry shall be **MAILED IMMEDIATELY** to all counsel of record.

**JOURNALIZED**

JUL 19 2007

TIM NEAL  
CLERK, WAYNE COUNTY, OHIO

*Mark K. Wiest*

Mark K. Wiest, Judge

Dated: 7/19/07

FILED  
IN THE COURT OF COMMON PLEAS, WAYNE COUNTY, OHIO  
WAYNE COUNTY, OHIO

STEVEN A. BOZSIK 2007 SEP 5 AM 9 07

Plaintiff

TIM NEAL  
CLERK OF COURTS

CASE NO. 06-CV-0849

vs.

CITY OF RITTMAN CEMETERY

FINAL JUDGMENT ENTRY

Defendant

This is a ruling on cross motions for summary judgment. Plaintiff's motion is denied and defendant's motion granted. Plaintiff's amended complaint is dismissed with prejudice. Plaintiff's 12(B)(6) motion to dismiss defendant's counterclaim is granted.

Plaintiff has already been declared a vexatious litigator in Medina County and had judicial approval to file this suit.

Costs to plaintiff.

IT IS SO ORDERED.



Mark K. Wiest, Judge

Dated: \_\_\_\_\_

9/5/07

**JOURNALIZED**

SEP - 5 2007

TIM NEAL  
CLERK, WAYNE COUNTY, OHIO

**STAMP "FILED"  
AND RETURN**

**IN THE COURT OF APPEALS  
NINTH APPELLATE DISTRICT OF OHIO  
WAYNE COUNTY**

IN RE: STEVEN A. BOZSIK

Case No. **07 CA 0069**

Movant

STEVEN A. BOZSIK

Plaintiff-Appellant

vs

On appeal from the Wayne County Court  
of Common Pleas

CITY OF RITTMAN CEMETERY

Case No. 06-CV-0849

Defendant-Appellee

**MOTION FOR LEAVE PURSUANT TO**  
**O.R.C. § 2323.52(F)(2)**

For the Movant

STEVEN A. BOZSIK 389-250  
1001 Olivesburg Rd.  
P.O. Box 8107  
Mansfield, Ohio 44901-8107

FILED  
9TH DISTRICT  
COURT OF APPEALS  
2007 SEP 18 AM 8 28  
TIM NEAL  
CLERK OF COURTS

Now comes Steven A. Bozsik, ("movant"), hereby moves this Honorable Court pursuant to O.R.C. § 2323.52(F)(2), seeking leave of this Court to commence a civil appeal from a final appealable order issued by the Wayne County Court of Common Pleas. This Court has previously mandated the movant to seek leave since he was labeled a vexatious litigator on March 17, 2005 from the Medina County Court of Common Pleas, even though, the vexatious litigator journal entry does not mandate this review.

This Court is required to deny the motion, unless the movant can justify the proposed appeal is not an abuse of process and the movant has a reasonable claim for this Court's review. See, O.R.C. § 2323.52(F)(2). This appeal brings forth claims for relief that needs the interpretation of law, including the facts since the trial court addressed the case merits and the screening court granted leave pursuant to O.R.C. § 2323.52(F)(1).

This Court is urged not to surmise what occurred during the litigation of the case since the record is not before this Court. The Ohio Constitution mandates a moving party an appeal of right if the inferior court issues a final appealable order; otherwise, this Court would lack jurisdiction to entertain the appeal if the order is not final by the inferior court.

Both the screening court and the trial court agreed the face of the complaint warrants probable relief. The record will purport the trial court setting a deadline for each motion for summary judgment, which is a review of the case merits and not a frivolous complaint trying to harass the party. In fact the final order grants the movant's motion to dismiss the counter claim so obvious merits in the case exist. With this being said the face of the final journal entry should muster the screening process in O.R.C. § 2323.52(F)(2) and leave should be granted.

The succinct journal entry by the trial court is vague as to how the court reviewed the merits of the case since no finding of facts and conclusion of law was journalized with the

judgment order. Assuming arguendo the trial court was not required to issue finding of facts and conclusion of law<sup>1</sup> with the summary judgment decision, this Court is required by law to review a court's order for summary judgment de novo. See, *McGee v. Goodyear Atomic* (4<sup>th</sup> Cir 1995), 103 Ohio App.3d 236, 659 N.E.2d 317 (citing, *Maust v. Bank One Columbus, N.A.* (1992), 83 Ohio St.3d 103, 107, 614 N.E.2d 765, 767-68). The *McGee* Court also opined: "That is not to say that we afford no deference whatsoever to the trial courts decision." (citing *Shepherd v. United Parcel Service* (1992), 84 Ohio App. 634, 641, 617 N.E.2d 1152, 1156-57.) In other words, this Court should conduct it's own review to determine if summary judgment was proper. See, *Schartz v. Bank One, Portsmouth, N.A.* (1992), 84 Ohio App.3d 806, 809, 619 N.E.2d 10, 11-12. Therefore, it is imperative for this Court to grant leave since the case merits where reviewed by the trial court and the screening court granted leave. Furthermore a final appealable order has been issued mandating an appeal of right.

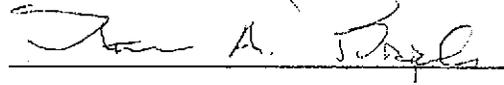
Accordingly, this Court is urged to grant leave pursuant to O.R.C. § 2323.52(F)(2) permitting this Court to entertain the complaint since the trial court and reviewing court both authorized the complaint to continue. The appeal is not an abuse of process and clearly satisfied Ohio law and not just an attempt to harass the opposing party since leave was granted by trial court issuing the vexatious litigator order.

---

<sup>1</sup> Findings of fact and conclusion of law were unnecessary in disposition of summary judgment motion. *Stanton v. Miller* (1<sup>ST</sup> Dist. 1990), 66 Ohio App.3d 201, 583 NE2d 1080.

It is so prayed this Court will grant leave pursuant to O.R.C. § 2323.52(F)(2) and permit the movant to file his notice of appeal and docketing statement with the time it takes this Court to issue its order not computed in the limitation time of App.R. 3.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Steven A. Bozsik", is written over a horizontal line.

Steven A. Bozsik 389-250  
P.O. Box 8107  
Mansfield, Ohio 44901

STATE OF OHIO )  
COUNTY OF WAYNE )

FILED  
9TH DISTRICT IN THE COURT OF APPEALS  
)ss: COURT OF APPEALS NINTH JUDICIAL DISTRICT

2007 NOV 15 AM 7 51

STEVEN A. BOZSIK

TIM HEAL  
CLERK OF COURTS C.A. No. 07CA0069

Appellant

v.

CITY OF RITTMAN CEMETERY

Appellee

JOURNAL ENTRY

Steven Bozsik ("Applicant") has filed with this Court an application for leave to proceed pursuant to R.C. 2323.52(F)(2). The application seeks permission to appeal from the trial court's September 5, 2007, order, which granted summary judgment in favor of Defendant and dismissed Applicant's complaint.

R.C. 2323.52(F)(2) provides:

"The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application."

Thus, a court of appeals is precluded from granting an application for leave to proceed unless it determines both that the proceeding is not an abuse of process and that reasonable grounds for the proceeding exist.

Upon consideration of Applicant's proposed filing and the relief requested therein, this Court concludes that reasonable grounds for this action do not exist.

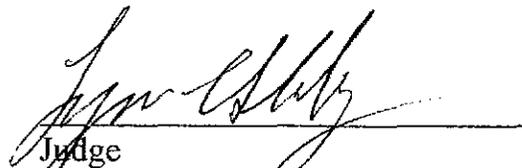
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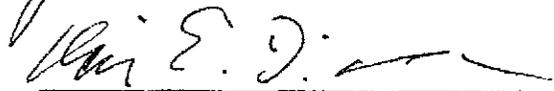
Accordingly, the application for leave to proceed is denied and the matter is dismissed.

Costs taxed to Applicant.

The clerk of courts is ordered to mail a notice of entry of this judgment to the parties and make a notation of the mailing in the docket, pursuant to App.R. 30, and to provide a certified copy of the order to the clerk of the trial court. The clerk of the trial court is ordered to provide a copy of this order to the judge who presided over the trial court action.



Judge



Judge

S10

A-26

COMMON PLEAS COURT

05 MAR 17 PM 3:36

FILED  
KATHY FORTNEY  
MEDINA COUNTY  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS  
MEDINA COUNTY, OHIO

Dean Holman	)	CASE NO. 04 CIV 0286
	)	
Plaintiff	)	
	)	
v.	)	Judge James L. Kimbler
	)	
Steven A. Bozsik	)	
	)	Judgment Entry with Instructions
Defendant	)	to the Clerk

This case is before the Court on the parties' cross motions for summary judgment. Based upon the evidence allowable pursuant to Civ. R. 56(C), the Court finds there are no genuine issues of material fact upon which reasonable minds could differ. Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's Motion for Summary Judgment is hereby granted and Defendant's Motion for Summary Judgment is denied.

**Statement of the Case**

On March 3, 2004, Plaintiff, who is the Medina County Prosecutor, filed a complaint seeking to have Defendant, Steven A. Bozsik, an inmate, declared a vexatious litigator as defined in R.C. §2323.52(A)(3).

Cross Motions for Summary Judgment were filed. Plaintiff's motion set forth

(VL 1364 PG 489)

A-27

four cases from the Medina County Common Pleas Court outlining Defendant's involvement, one from the Wayne County Common Pleas Court and a Mandamus action filed directly in the Ninth District Court of Appeals. Exhibits in the form of judgment entries and docket sheets were attached, supporting Plaintiff's position.

In his brief in opposition to Plaintiff's Motion for Summary Judgment, Defendant contends that Plaintiff was required to have filed the vexatious litigator claim as a compulsory counterclaim in Defendant's action in the Wayne County Common Pleas Court proceeding titled *Bozvik v. Ross et.al.* The Court finds that Defendant's argument is not well taken.

Turning first to Defendant's motion, the Court finds that Plaintiff's claim in this case was *not* a compulsory counterclaim in the Wayne County case wherein Mr. Boszik sued Kevin Ross, Warren Walter, James Elam, David Burkhart, and Darrell Burkhart. Plaintiff was never named a party in the Wayne County lawsuit. Civil Rule 13 requires a party to bring as a counterclaim any claim the pleader has against an *opposing party*. Therefore Civil Rule 13 is inapplicable under the facts of this case. Moreover, even assuming Holman had been a party, the cause of action in this case does not arise out of the facts complained of by Defendant in the Wayne County case, but rather the repeated filing of alleged frivolous actions, which is distinctly different.

In addition, the Court finds that the clear language of R.C. §2323.52(B) authorizes independent actions for a declaration of vexatious litigator, separate from the causes allegedly giving rise to the vexatious conduct.

Turning to Plaintiff's motion for summary judgment, it is necessary to analyze whether Plaintiff sufficiently established the criteria to declare Defendant a vexatious

litigator. The Court has reviewed the pleadings of the civil cases incorporated as evidence in Plaintiff's Motion for Summary Judgment to determine whether Defendant's conduct satisfies either of the following: a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action or 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.

The court begins with Defendant's petition to vacate or set aside sentence in Case No. 99 CR 0446, a post conviction proceeding. This seventy-three (73) page petition raised numerous contentions, all of which were overruled. The Court found "The legal claims set forth in the complaint were not warranted under existing law, could not be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of a new law."

A review of Medina County Court case number 03 CIV 0509, which was initiated on April 15, 2003, reflects that Defendant raised the same issues he had previously raised without effect in his post conviction motion to vacate or set aside sentence in Case No. 99 CR 0446, without any additional facts or new legal basis. To find that said claims are now warranted under existing law, or could be supported by a good faith argument for the establishment of new law would directly controvert this court's prior ruling. Furthermore, that case was declared frivolous or malicious under R.C. §2969.24. After the case had been dismissed, Defendant persisted and filed a motion for reconsideration pursuant to Civil Rule 60. This motion was denied for failure to demonstrate any justification for relief.

On June 12, 2003, Defendant filed a complaint for Permanent Injunction of Harassment against the entire Medina County Prosecutor's office which was dismissed as frivolous or malicious pursuant to R.C.2969.24.

On July 29, 2003 Defendant filed a Declaratory Judgment action against County Coroner Dr. Neil Grabenstetter in Medina County Court Case No. 03 CIV 0983. In that case Defendant sought to change the time of death on the death certificate of Carol Bozsik, for whom the Defendant was convicted of Aggravated Murder. This case was likewise dismissed as frivolous or malicious.

The Ninth District Court of Appeals denied Defendant's request for writ of mandamus against the Medina County Commissioners and Sheriff's Office. In that case Mr. Bozsik sought to force the appointment of substitute counsel to handle his complaints of wrongdoing against the witnesses for the state at his criminal trial. The Court of Appeals denied the writ, and found it was based on the same allegations Mr. Bozsik had repeatedly raised in the past.

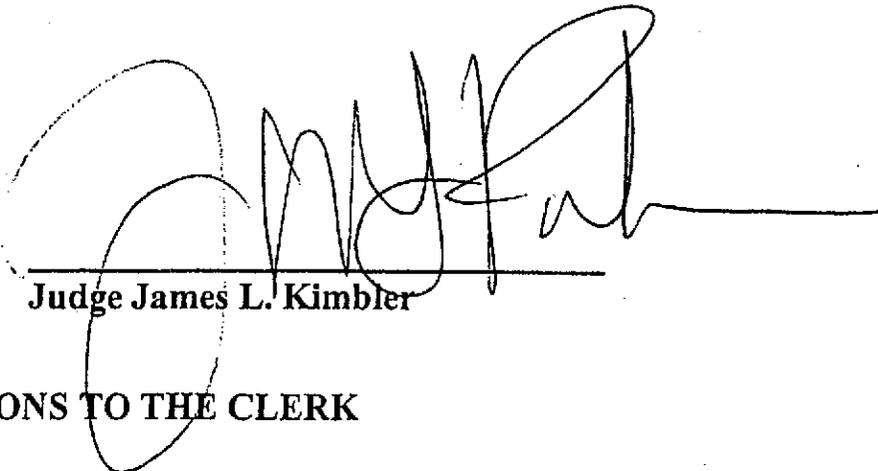
The Defendant's Declaratory Judgment action filed in Wayne County sought a determination of criminal wrong doing taking place in Medina County, against the state witnesses in his criminal trial. Again, this Court found that Mr. Bozsik's case was based on claims already repeatedly denied, without any legal basis for the reconsideration. This case clearly showed Defendant's vexatious conduct.

Based on the foregoing, the Court finds that Defendant has engaged in a pattern of habitual and persistent vexatious conduct.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant's Motion for Summary Judgment is denied.
2. Plaintiff's Motion for Summary Judgment is granted.
3. Defendant is a vexatious litigator as defined in R.C. §2323.52(A)(3).
4. Unless Defendant first obtains leave of court, Defendant is prohibited from:
  - a) Instituting any 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 any of the aforesaid courts prior to the entry of this Order; and
  - c) Making any application, other than an application for leave to proceed under R.C.2323.52(F)(1), in any legal proceeding instituted by the Defendant or another person in the court of claims, or in a court of common pleas, municipal court, or county court

Costs to Defendant.



Judge James L. Kimbler

**INSTRUCTIONS TO THE CLERK**

Pursuant to Civil Rule 58, the Clerk is hereby directed to serve upon the