

THE SUPREME COURT OF OHIO

Larry E. Ealy,

08-1656

Appellant

: On Appeal from the Montgomery
: County Court Of Appeals
: Second Appellate District
:
: Appeals Case No. CA 21934
: Trial Case No. 2005CV6344
:

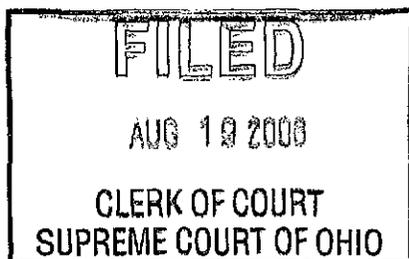
Rhine McLin

Appellees.

MEMORANDUM IN SUPPORT OF JURISDICTION OF
APPELLANT LARRY E. EALY

Respectfully submitted

Larry E. Ealy



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EXPLANATION OF WHY THIS CASE IS A CASE OF GREAT IMPORTANCE AND PUBLIC INTEREST

This case raises a substantial constitutional question and is one of great importance whereas the second District Court of Appeals misaligned the Appellants due process rights by ruling him a vexatious litigator after sustaining a malicious prosecution.

ORC 2323.52 statute was a stratagem implemented to Obstruct the Appellants Constitutional Rights the Vexatious Litigator act is a tool of Fraud to use against Pro-se litigants whom have been wronged in the State of Ohio. **Georgia v. Rachel, 384 U.S. at 791.**

The State of Ohio has always deprived Blacks of there United States Constitutional Rights since the beginning and ending of slavery and ORC 2323.52 is a cover up in this case to hide behind the hidden racial discrimination, bias, prejudice, and impartiality in the minds of the Court and Ohio Constitutional law makers. **Strauder v. West Virginia 100 U.S. 309-310.**

STATEMENT OF CASE AND FACTS

The Appellant was charged with disorderly conduct and conduct at a commission meeting on August 13, 2003.

The Appellant had defeated criminal case No. 2003CRB09526 and moved for Federal Civil Rights violations in the Court of Common Pleas for Montgomery County Ohio based on the dismissal of the charges.

On February 25, 2004 while the Appellant faced charges from September 3rd August 27, and August 13, 2003 Deidre Logan dismissed the August 13, charges after a 6 months malicious prosecution.

August 13, 2003 meeting were she and the City of Dayton ruled the Appellant out of order and set trial for disorderly conduct and conduct at a commission meeting.

An instant law suit on the defeated charges from August 13, 2003 and the case was assigned to visiting Judge Steven A. Yarborough who has been discovered to intentionally deprive the Appellant of his due process rights the vexatious litigation ruling was an under cover scheme of Chief Trial Counsel John Danish.

Case No. 2005 CV6344 was set for trial December 11, 2006 the Appellees had filed an order on August 31, 2005 totally out dated to rule the Appellant a vexatious litigator.

The Court never made a ruling on the August 31 lawsuit a ruling was never made by Judge Yarborough within the time allowed to rule the Appellant a vexatious litigator and to dismiss case No. 6344 because all Civil Complaints must be ruled upon within 28 days by the Court.

The request to rule the Appellant a vexatious litigator was based on the fact that Judge Pickrel found the Appellant guilty of obstruction of official business in case No. 9585/9655 but the those cases were totally dismissed by visiting Judge Larry Moore on July 24, 200 on remand.

The reason the Appellant was found guilty of Obstruction of Official Business Judge Pickrel tried him without counsel on February 25, 2003 and allowed a citizen by the name of Mark Gessner to pass him notes this is the same Mark Gessner that was not allowed to enter the Ohio Supreme Court on May 4, 2007.

After Mayor Rhine McLin committed perjury when she stated under oath that she did not have the Dayton Police to arrest the Appellant and several other citizens Mark Gessner was arrested out of Pickrels Court room by former Sheriff Dave Vore and Pickrel stated that Gessner was trespassed out of the Dayton municipal Courthouse by another County Court but that was a false statement made by Pickrel.

The Obstruction charge was used down the road to establish ORC2323.52 to circumvent the Appellants 1983 claims that were in progress to be filed once the City Hall charges were defeated.

The Court of Appeals exceeded its jurisdiction and showed its bias and prejudice by wrongfully affirming that the Appellant was a vexatious litigator under RC.2323.52 because he didn't state any facts that declared he wasn't it was the Appellees job to prove that he was but they failed.

All of the cases concerning the City Hall issues have the same exact Actors acting under the color of authority who tampered with the testimony in case No. 2003CRB 9655/9585 App. 20462 and App. 21750 were both appeals transcripts were hacked up by the City of Dayton Chief Trial Counsel John Danish.

This act alone calls for the firing and criminal charges brought against John Danish and the City of Dayton et al.

The ruling under 2323.52 is an act of passion and prejudice it was an act of retaliation and reprisal, the Appellant was tried for disorderly conduct obstruction of official business and conduct at a commission meeting when he used the word nigger on September 3, 2003 the trial violated First Amendment under the U.S. Constitution.

The City of Dayton violated Constitutional law by legalizing the word Nigger, the word Nigger was used while the Dayton Police beat the Plaintiff in 1990 as told to the Commission of Dayton et al.

The charges used to rule the Appellant a vexatious litigator stemmed from the words used by the Dayton Police after the Appellant told the Mayor and the sitting Commission what was said to him during his beating then the Appellant was charged on the dates of August 13, August 27, and September 3, 2003 with a....**137.02-M2 OBSTRUCTION OF OFFICIAL BUSSINESS/30.06 (A)-(2) M4 CONDUCT AT A COMMISSION MEETING/30.06 (A)-(3) M4 CONDUCT AT COMMISSION MEETING/ 137.02 (A)-(1) M4 DISTURBING A LAW MEETING OBSTRUCTION/137.02 (A)-(2) M4 DISTURBING A LAWFUL MEETING OUT RAGE THE GROUP/137.01 (A)(2) M4 DISORDERLY CONDUCT.**

Then on August 27, 2003 more charges were maliciously filed stemming from a **137.02 (A)-(1) M4 DISTRBING A LAWFUL MEETING/137.01 (A)-(2) M4 DISORDERLY CONDUCT/ 30.06 (A)(3) CODUCT AT COMMISSION MEETING; 137.02 (A)-(1) M4 DISTRBING A LAWFUL MEETING/137.01 (A)-(2) M4 and on August 13, 2003 for DISORDERLY CONDUCT/ 30.06 (A)(3) and for CONDUCT AT COMMISSION MEETING;**

The Appellant defeated each and every element of all charges brought by the City of Dayton et al thus calling for ORC 2323.52 to be abolished as police Brutality should be abolished in the United States of America.

See attached final Judgment filed July 7, 2008 and final Judgment affirming ORC 2323.52 August 3, 2007 were the Court of Appeals confirmed on page 8 that the City could not established habitual conduct but still went against Constitution.

ARGUMENT IN SUPPORT OF PROPOSTION OF LAW

The State actors had a specific intent to deprive the Appellant of a Federally Protected Right Guaranteed by the United States Constitution under the First Amendment that has kept the Appellant from freely speaking at the commission meetings while barring him from filing any proceedings concerning the above cause for violations under Title 42 1983.

Statue 2323.52 has been used as a tool to misalign the Plaintiff Federal Civil Rights as it sits the State can deprive the Appellant of a Federal Right and the Court of Appeals has continued to dismiss any action or legal recourse to right the wrong of the Appellant based on the vexatious ruling and not the merits of the cause depriving the Appellant under the Ohio Constitution Article 16, I. **Mayor v. Bristow, Moldovan v. Cuyahoga Cty. Welfare Dept.(1986), 25 Ohio St. 3d 29325 OBR 343, 496 N.E. 2d 466; and Cent. Ohio Transit Authority v. Timson (1998), 132 Ohio App. 3d 41, 724 N.E. 2d 458,**

The Court of Appeals had deprived the Appellant of his due process and equal protection. **Atkins v. Grumman Ohio Corp. 1988), 37 Ohio St. 3d 80, 84 523 N.E. 2D 851** right to legal redress of injuries. Pfeifer J., Dissenting with Judge Abele.

Current Mayor Rhine McLin has violated the Appellants 1983 Federal Constitutional Rights in above matter. Current Mayor, City of Dayton et al, Montgomery County Court of Common Pleas, Court of Appeals, Court of Claims have come together with abuse of authority and have ruled the Plaintiff a vexatious litigator under 2323.52.

According to the Ohio Supreme Court 2323.52 is a valid claim, **Gains v. Harmon 148 App.3d 357, 2002-2793**. John C. Musto trial counsel for the City of Dayton cited this case and the Court of Appeals affirmed the ruling by State Court Judge Steven A.

Yarborough and Administrative Judge Dennis Langer on August 3, 2007 but in this case it was used to deprive the Appellant of legitimate claims and shows that a black person in the City of Dayton and in Montgomery County are not afforded State and Federal Rights by State Officials. **Strauder v. West Virginia 100 U.S. 309-310**.

The appeals Court totally ignored **Pisani v Pisani November 18, 1999) Cuyahoga App. No. 74799**. Where the court revered a vexatious litigator determination.

In this case Judge Yarborough was sent to circumvent the Appellants Constitutional Rights thus showing that the Court of Common Pleas had no remedy at law for Appellant Ealy as have the appeals court demonstrated in this matter. **100 U.S. 309-310.**

The appellate court ignored the fact that the appellant was successful in his criminal litigation brought against him by the State the prosecution has been exposed under 1983 for malicious prosecution concerning this case the action of the Appeals Court shows that there exist an inadequate remedy for the colored race in Montgomery County Ohio.

The appeals court determined that the action taken by the appellant was vexatious and constituted habitual and persistent conduct without reasonable grounds after it reversed the first trial showing its inconsistent and unwarranted rulings involving the Appellant.

Contrary to the Second District Courts of appeals ruling the Tenth Appellate District Court has stated in its four or five case listed as in 2005CV6344 Ealy v. McLin as alleged against the Appellant do not amount to habitual and persistent conduct **Cent. Ohio Transit Auth. v. Timson (1988), 32 Ohio App. 3d. 41, 54 724 N.E.2d. 458.** One does not reach the habitual prongs until the conduct is found to be vexatious i.e. unwarranted.

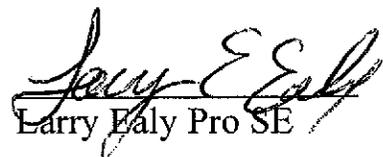
The City of Dayton Ohio et el cited **Gains v. Harmon** to establishing persistent conduct against the Appellant under 2323.52 unlike Ealy v. McLin, Harmon plead guilty to several criminal charges as for the Appellant he successfully defeated the State on each and every Element of 31 criminal charges brought to bar including the State charges in 21750 that the State failed to appeal the not guilty verdicts of visiting Judge Larry Moore.

CONCLUSION

For the reasons discussed above, this case involves matters of public and great general interest and substantial constitutional questions. The Appellant requests that this Court accept jurisdiction in this case so that the important issues presented will be reviewed on the merits

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing will be served to Attorney John C. Musto Counsel for Appellees at 101 West Third Street Dayton Ohio 45402 by ordinary US. Mail within 3 days of this filing on this day of August ____ 2008.


Larry Ealy Pro SE

Although Ealy's brief fails to set forth proper assignments of error, the thrust of his argument is that the trial court erred in designating him a vexatious litigator under R.C. §2323.52.

Ealy filed the present lawsuit against the appellees on August 15, 2005, alleging a violation of his constitutional rights and seeking damages of \$1,000,000. The complaint alleged that Mayor McLin had violated Ealy's rights by ruling him out of order for speaking longer than the permitted three minutes during the public-comment portion of a Dayton City Commission meeting.

The appellees responded to the complaint by filing a counterclaim alleging that Ealy is a vexatious litigator under R.C. §2323.52 and seeking an order prohibiting him from instituting or continuing legal proceedings without leave of court.

The appellees later moved for summary judgment on Ealy's complaint and their counterclaim. Accompanying the motion was an affidavit from Clarence Williams, who served as clerk of the Dayton City Commission. With regard to Ealy's allegation of a constitutional violation, Williams averred as follows:

"4. The Dayton Commission conducts its official business at public meetings on a weekly basis. The Commission's official business includes, but is not limited to, the enactment of ordinances and resolutions and the approval and award of government contracts. It is the Dayton Mayor's duty, with the assistance of the Clerk of the Commission, to run the Commission [m]eetings and see that meetings are conducted in an orderly manner without interference or disruption. The public meetings also have a public-comment portion where members of the public are allowed to register to speak and are allowed to address the City Commission for up to three minutes.

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"5. Each speaker signs a sheet to register to speak and is notified of the time limit. The purpose of the registration and time limit is to allow the Dayton Commission to conduct official business in an orderly manner without undue interference or disruption.

"6. On August 13, 2003, the Plaintiff, Larry E. Ealy, spoke during the public-comment portion of the Dayton Commission Meeting. Prior to speaking he signed the registration sheet and was informed that he had only three minutes to speak.

"7. Mr. Ealy went over his three minutes and was asked several times to finish speaking. Mr. Ealy refused to do so and argued with Mayor McLin. Mayor McLin then ruled Mr. Ealy out of order for exceeding his time limit and disrupting the Dayton Commission Meeting."

To support their allegation that Ealy was a vexatious litigator, the appellees' motion included certified copies of court records in four other recent cases he had filed. In the first case, *Larry E. Ealy v. Rhine McLin*, Montgomery C.P. No. 05-CV-2034, Ealy sought damages of \$3,000,000 based on Mayor McLin allegedly violating his constitutional rights by ruling him out of order for using a racially derogatory term and exceeding his speaking time during another City Commission meeting. The trial court dismissed the case for failure to prosecute, and we dismissed Ealy's appeal for failure to file a brief.

In the second case, *Larry E. Ealy v. Judge John S. Pickrel*, Montgomery C.P. No. 05-CV-2605, Ealy sought damages of \$2,700,000 based on Judge Pickrel violating his constitutional rights when presiding over a trial at which he was convicted and sentenced for disorderly conduct. Ealy voluntarily dismissed his complaint one month later.

In the third case, *Larry E. Ealy v. Jerry D. Schwartz*, Montgomery C.P. No. 05-CV-2792, Ealy filed successive complaints against city and county employees alleging, among

other things, a conspiracy to bring false domestic violence charges against him. The complaints sought damages ranging from \$40,000 to \$1,500,000. The trial court dismissed the lawsuit for failure to prosecute, and we dismissed Ealy's appeal for lack of prosecution.

In the fourth case, *Larry E. Ealy v. Judge James F. Cannon*, Ealy filed an original action in the Ohio Supreme Court seeking a writ of mandamus directing the respondent to dismiss criminal charges against him and to recall an arrest warrant. The Ohio Supreme Court summarily dismissed the action.

Relying on the affidavit from Clarence Williams and court records from the foregoing cases, the appellees argued: (1) Mayor McLin's act of ruling Ealy out of order did not violate his constitutional rights, (2) Mayor McLin enjoyed absolute immunity when performing her official functions during the Dayton City Commission meeting, (3) Ealy could not establish that the City of Dayton had a policy, practice, or custom that was the moving force behind the non-existent violation of his constitutional rights, and (4) Ealy's "perpetual filing of baseless lawsuits and failure to prosecute them" constituted vexatious litigation prohibited by R.C. §2323.52.

Ealy countered the summary judgment motion with a largely non-responsive "Answer" in which he insisted, inter alia, that Mayor McLin had violated his First Amendment rights by denying him an opportunity to finish speaking to the Dayton City Commissioners. Ealy also increased his damages request to \$2,000,000. Ealy's response to the summary judgment motion lacked any evidentiary materials.

On December 5, 2006, the trial court entered summary judgment against Ealy on his complaint and on the counterclaim filed by Mayor McLin and the City of Dayton. Relying on our opinion in *State v. Cephus*, 161 Ohio App.3d 385, 2005-Ohio-2752, the trial court

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held that the three-minute time limit imposed on Ealy did not violate his First Amendment rights. The trial court also held that Mayor McLin enjoyed absolute immunity for her actions during the meeting. Finally, the trial court found no grounds for municipal liability on the non-existent constitutional claim.

With regard to the appellees' counterclaim, the trial court found that Ealy had engaged in "vexatious conduct" under R.C. §2323.52. The trial court also found that he met the statute's definition of a "vexatious litigator." As a result, the trial court entered an order prohibiting Ealy from instituting or maintaining legal proceedings in a court of claims, court of common pleas, municipal court, or county court without obtaining leave to proceed as set forth in the statute.

On appeal, Ealy makes repeated assertions of gross misconduct by local police, prosecutors, attorneys, judges, and other officials. This misconduct, which Ealy believes is part of a scheme to deprive him of his constitutional rights, includes alleged acts of brutality, conspiracy, malicious prosecution, lying, harassment, racial discrimination, intimidation, fraud, and destruction of evidence. Nowhere in his brief, however, does Ealy address the legal basis for the trial court's entry of summary judgment against him on his complaint alleging that Mayor McLin violated his constitutional rights. In any event, we find no error in that aspect of the trial court's summary judgment ruling. The three-minute limit on public comments during Dayton City Commission meetings is a valid, content-neutral, time, place, and manner restriction that is narrowly tailored to serve a significant government interest. *Cephus*, 161 Ohio App.3d at 392-393. Thus, the trial court correctly determined, as a matter of law, that Mayor McLin did not violate Ealy's constitutional rights by ruling him out of order for exceeding the three-minute limit. This conclusion alone

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entitled the appellees to summary judgment on Ealy's complaint.

We also find no error in the trial court's entry of summary judgment on the appellees' counterclaim. Under R.C. §2323.52(A)(2), "vexatious conduct" is defined as conduct that does 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."

Under R.C. §2323.52(A)(3), a "vexatious litigator" includes "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."

In entering summary judgment on the vexatious-litigator counterclaim, the trial court reasoned in part:

"Here, Plaintiff's actions in filing this instant lawsuit, as well as his filing of the four other pro se in forma pauperis lawsuits against the City of Dayton and its employees and officials within a six-month period are not warranted by existing law and cannot be supported by a good faith argument for an extension or reversal of existing law. Moreover, such unwarranted conduct over such a short period of time is habitual and persistent. In addition, Plaintiff's failure to prosecute the actions establishes that the suits serve merely

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to harass and are imposed solely for delay. Further, Plaintiff's response to Dayton's Counterclaim in the instant matter serves merely to make unfounded and scandalous comments about the conduct of public officials, which are irrelevant to the subject matter and serve merely to harass or maliciously injure those against whom they are made. Plaintiff's civil lawsuits are an improper attempt to use the civil system to avoid criminal prosecution."

Upon review, the record supports the trial court's determination that Ealy has engaged in vexatious conduct as a matter of law. At a minimum, Ealy's prior lawsuit against Mayor McLin seeking \$3,000,000 in damages for being ruled out of order during a meeting lacked any possible legal basis. Likewise, his suit for damages of \$2,700,000 based on Judge Pickrel violating his constitutional rights when presiding over a criminal trial lacked any basis in law. We reach the same conclusion with regard to Ealy's filing of successive complaints against city and county employees alleging, among other things, a conspiracy to bring false charges against him. As noted above, the trial court dismissed the lawsuit for failure to prosecute, and we dismissed Ealy's appeal for lack of prosecution. Ealy's original action, which sought the dismissal of criminal charges against him and the recall of a warrant, was equally frivolous and was summarily rejected.

Finally, Ealy's present lawsuit reveals the vexatious nature of his filings and further supports the trial court's ruling. Ealy commenced this action against Mayor McLin and the City of Dayton on August 15, 2005, alleging a violation of his constitutional rights based on his being ruled out of order for exceeding the three-minute speaking limit during a Dayton City Commission meeting. Ealy asserted this claim despite our ruling two months earlier that the time limit was constitutional. See *Cephus*, 161 Ohio App.3d at 392-393.

Having reviewed the record, we find no genuine issue of material fact as to whether Ealy habitually, persistently, and without reasonable grounds has engaged in vexatious conduct in several civil actions. The certified copies of court records provided by the appellees supported the trial court's summary judgment ruling, and Ealy presented no evidence to the contrary. Accordingly, we affirm the judgment of the Montgomery County Common Pleas Court.

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WOLFF, P.J., and GRADY, J., concur.

Copies mailed to:

Larry Ealy
Patrick J. Bonfield
John J. Danish
John C. Musto
Hon. Dennis J. Langer

THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT

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MONTGOMERY COUNTY
OHIO

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MONTGOMERY COUNTY

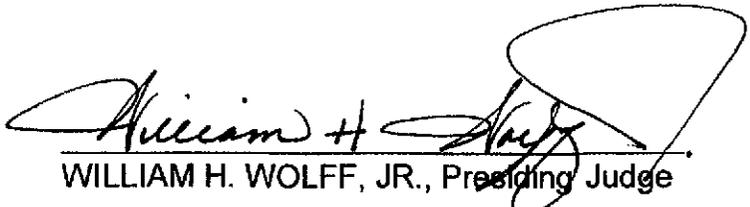
LARRY E. EALY	:	Appellate Case No. 21934
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<i>Plaintiff-Appellant</i>	:	Trial Court Case Nos. 2005-CV-6344
v.	:	
	:	
RHINE McLIN, et al.,	:	
	:	
<i>Defendants-Appellees</i>	:	
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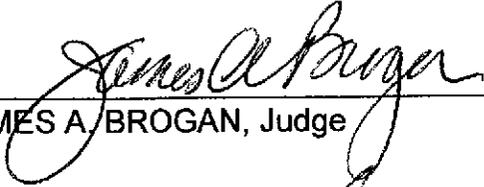
DECISION AND ENTRY
July 7, 2008

PER CURIAM:

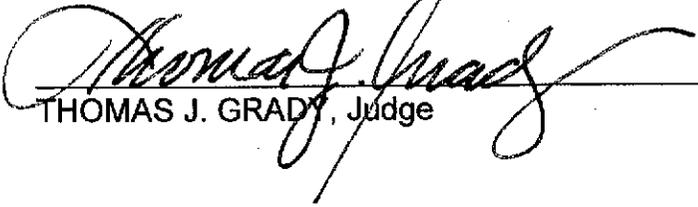
This matter is before the Court on Larry E. Ealy's "Motion for Rehearing and Reversal or Modification of the State[']s Current Statute Under 2323.52." In his motion, Ealy has requested that we reconsider our judgment in this case, which affirmed the trial court's judgment that Ealy is a vexatious litigator under R.C. 2323.52. We see no reason to disturb our opinion and judgment in this matter. Any "modifications" to R.C. 2323.52 must be enacted by the General Assembly. Ealy's motion is OVERRULED.

SO ORDERED.


WILLIAM H. WOLFF, JR., Presiding Judge



JAMES A. BROGAN, Judge



THOMAS J. GRADY, Judge

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