

ORIGINAL

IN THE SUPREME COURT OF OHIO

SAINT TORRANCE,

: CASE NO. 09-1721

Relator,

v.

: ORIGINAL ACTION IN MANDAMUS AND
: PROHIBITION

HONORABLE JUDGE JEROME J.
METZ, et al.,

Respondents.

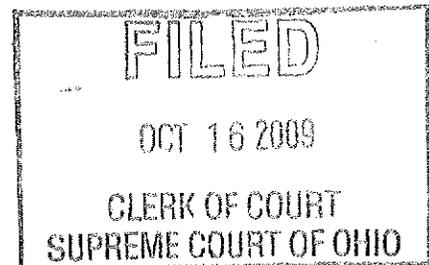
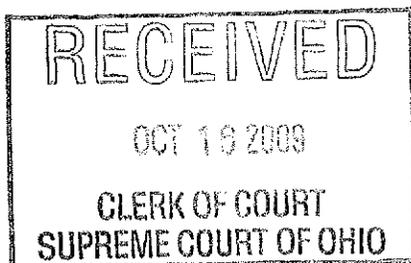
RESPONDENTS, LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC, AND
NICHOLAS J. DINARDO'S MOTION TO DISMISS AND MOTION TO DECLARE
RELATOR A VEXATIOUS LITIGATOR

Kimberly V. Riley (0068187)
Lisa M. Zaring (0080659)
Montgomery, Rennie & Jonson
36 East Seventh Street, Suite 2100
Cincinnati, Ohio 45202
Tel: (513) 241-4722
Fax: (513) 241-8775
Email: kriley@mrjlaw.com
lzaring@mrjlaw.com
Counsel for Respondent
The Hon. Jerome J. Metz, Jr.

Saint Torrance
3182 Werk Road, #2
Cincinnati, Ohio 45211
Pro Se Relator

Joseph T. Deters, Esq.
Hamilton County Prosecutor
230 East Ninth Street, 8th Floor
Cincinnati, Ohio 45202
Counsel for Respondents, Magistrate Michael
L. Bachman and Patricia M. Clancy

John E. Schrider, Jr. (0014967)
(Counsel of Record)
Legal Aid Society of Southwest Ohio, LLC
215 East Ninth Street, Suite 200
Cincinnati, Ohio 45202
Phone: (513) 241-9400
Fax: (513) 241-1187
E-mail: jschrider@lascinti.org
Counsel for Respondents Nicholas J. DiNardo,
Esq. and Legal Aid Society of Southwest Ohio,
LLC



**RESPONDENTS, LEGAL AID SOCIETY OF SOUTHWEST OHIO, LLC, AND
NICHOLAS J. DINARDO'S MOTION TO DISMISS AND MOTION TO DECLARE
RELATOR A VEXATIOUS LITIGATOR**

Respondents, the Legal Aid Society of Southwest Ohio, LLC, and attorney Nicholas J. DiNardo, by and through counsel, and pursuant to Supreme Court Rule X(5), respectfully move the Court to dismiss this original action, for the reasons stated herein. Further, respondents move the Court, pursuant to Supreme Court Rule XIV(5)(B), to declare Relator a vexatious litigator and to preclude him from continuing to bring this or other frivolous actions against them.

STATEMENT OF THE CASE AND FACTS

The Legal Aid Society of Southwest Ohio, LLC ("Legal Aid"), serves low-income persons in seven counties in Southwest Ohio, with offices in Cincinnati, Hamilton, and Wilmington, Ohio. It is an affiliated company of the Legal Aid Society of Greater Cincinnati. Legal Aid provides a broad range of legal representation in civil matters to low-income clients living in Southwest Ohio. Legal Aid's mission is to resolve serious legal problems of low-income people, promote economic and family stability and reduce poverty through effective legal assistance. Attorney Nicholas J. DiNardo is a managing attorney with the Legal Aid Society of Southwest Ohio, LLC, and manages the Society's Housing and Consumer Law Practice Group.

Relator, Saint Torrance, is a landlord in Cincinnati, Ohio. Legal Aid and DiNardo represent a former tenant of Relator, William Aleu, in a case for money filed by Relator in Hamilton County Common Pleas Court, Case No. A0905698. Respondents, Judge Jerome J. Metz and Magistrate Michael L. Bachman, preside over this case, which is currently pending. Respondent Patricia M. Clancy is the Common Pleas Clerk of Court.

Relator rented an apartment to Mr. Aleu in 2008. Mr. Aleu had a Housing Choice (formerly known as "Section 8") voucher administered by the Cincinnati Metropolitan Housing Authority ("CMHA"). Relator developed a dispute with CMHA about the amount of rent it was to pay him on behalf of Mr. Aleu. Mr. Aleu paid his portion of the rent to Relator during this time, and in fact paid sums greater than those required by HUD regulations to Relator based on his demands for additional money. Mr. Aleu has counterclaims pending against Relator for these additional amounts and his security deposit in Case No. A0905698.

Relator previously filed a lawsuit against CMHA regarding the amount of rent that he thought should be paid to him, Hamilton County Municipal Court Case No. 09CV14222. The Hamilton County Municipal Court issued a decision granting summary judgment in CMHA's favor. Relator appealed the Hamilton County Municipal Court's decision to the First District Court of Appeals, where it is now pending, Case No. C-081292. Relator also filed a second action making the same general claims against CMHA in Hamilton County Court of Common Pleas, Case No. A0901028. Recently, Relator has filed several original actions in mandamus in this Court against CMHA and several of its employees with claims similar to the ones currently before the Court in this case.

For reasons that remain unclear, Relator initiated the instant action in Mandamus, while the Common Pleas action is still pending.

For the reasons that follow, this original action must be dismissed. Further, as evidenced by the at least seventeen actions in mandamus filed by Relator in the past three months against CMHA and its employees, Hamilton County judges and officials, and respondents, the Court should declare Relator to be a vexatious litigator and preclude him from further frivolous conduct.

MEMORANDUM OF LAW

1. A petition for a writ of mandamus must be dismissed unless a relator demonstrates that (1) the relator has a clear right to the relief prayed for; (2) respondent is under a corresponding legal duty to perform the requested acts; and (3) relator has no plan and adequate legal remedy.

The criteria for entitlement to a writ of mandamus are clear. The party must show: (1) that it has a clear legal right to the relief it seeks; (2) a corresponding duty on the part of the respondent to provide such relief; and (3) the lack of an adequate legal remedy otherwise in the ordinary course of the law. *State ex rel. Couch v. Trimble Local Sch. Dist. Bd. of Edu.* (2008), 120 Ohio St. 3d 75, 896 N.E. 2d 690; O.R.C. §2731.05. The instant action does not satisfy those requirements.

Relator has not meaningfully specified the type of relief he is seeking by way of a writ of mandamus, nor has he established either a clear legal right on his part to such relief or a clear legal duty on the part of Legal Aid and DiNardo to provide it. Furthermore, Relator has an adequate remedy at law. He can continue to litigate his claims against Mr. Aleu in the pending Common Pleas case. He could have filed a complaint against Legal Aid or DiNardo with the appropriate authority if such a complaint is warranted, which it is not.

Because this action does not satisfy the criteria for a writ of mandamus, it must be dismissed.

2. Relator Has an Adequate Legal Remedy.

The underlying civil action is still pending in Common Pleas Court of Hamilton County, No. A0905698. Once the case is decided, Relator will have a right of appeal under the Ohio Rules of Appellate Procedure. A writ of mandamus is not a substitute for appeal, and a direct appeal is an adequate remedy at law precluding the issuance of a writ of mandamus. R.C. 2731.05; *State ex rel.*

Ohio Civ. Serv. Employees Assn., AFSCME, Local 11, AFL-CIO v. State Emp. Relations Bd. (2004)
104 Ohio St.3d 122, 818 N.E.2d 688.

3. Relator Should Be Declared a Vexatious Litigator.

Supreme Court Rule XIV(5)(B) states that:

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.

During the past three months, Relator has filed at least seventeen actions in mandamus in this court against various parties, including Respondents Legal Aid and DiNardo, CMHA and its various employees, and numerous judges and elected officials in Hamilton County. The pleadings filed by Relator are largely unintelligible and serve no purpose other than to harass the various Respondents. The pleadings tend to be duplicative and none are firmly grounded in any legitimate legal claim.

Furthermore, at least one lower court has already held Relator to be a vexatious litigator as defined in Revised Code § 2323.52. Judge Ralph E. Winkler of the Hamilton County Court of Common Pleas found Relator to be a vexatious litigator in a final entry dated October 5, 2009, in the case *Saint Torrance v. Time Warner Cable*, Case No. A0907334. (Copy attached as Exhibit A.) Relator's conduct is causing unnecessary costs to this Court, the Courts of Hamilton County and to not-for-profit public interest law firms like Legal Aid.

Therefore, Legal Aid and DiNardo respectfully request that this Court declare Relator a vexatious litigator and preclude him from continuing his pending actions or filing any new actions without prior leave of the court and prepayment of costs.

CONCLUSION

Because Relator cannot satisfy the criteria for granting a writ of mandamus, this action must be dismissed. Further, pursuant to Supreme Court Rule XIV(5)(B), the Court should declare Relator to be a vexatious litigator and preclude him from continuing to bring this or other frivolous actions.

Respectfully submitted,



John E. Schrider, Jr. (0014967)
Attorney for Respondents DiNardo and Legal Aid
Legal Aid Society of Southwest Ohio, LLC
215 East Ninth Street, Suite 200
Cincinnati, Ohio 45202
Phone: (513) 241-9400
Fax: (513) 241-1187
E-mail: jschrider@lascinti.org

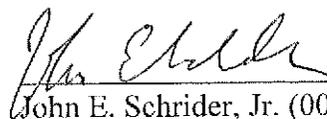
CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served upon the following parties, via regular U.S. mail, first-class postage prepaid on this 15th day of October, 2009:

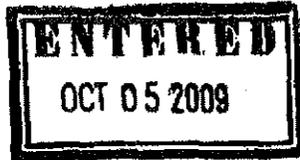
Pro se Relator
Saint Torrance
3182 Werk Road, #2
Cincinnati, Ohio 45211

Counsel for Respondents, Magistrate
Michael L. Bachman and Patricia M. Clancy
Joseph T. Deters, Esq.
Hamilton County Prosecutor
230 East Ninth Street, 8th Floor
Cincinnati, Ohio 45202

Counsel for Respondent the Hon. Jerome J. Metz
Kimberly V. Riley, Esq.
Lisa M. Zaring, Esq.
Montgomery, Rennie & Jonson
36 East Seventh Street, Suite 2100
Cincinnati, Ohio 45202

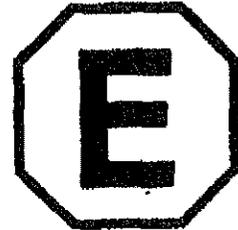


John E. Schrider, Jr. (0014967)
Attorney at Law



Ralph E. Winkler

COURT OF COMMON PLEAS
HAMILTON COUNTY OHIO

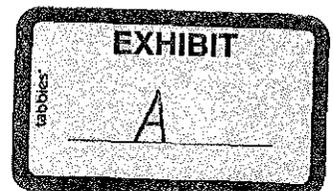


SAINT TORRENCE,	:	CASE NO. A0907334
	:	
PLAINTIFF	:	JUDGE RALPH E. WINKLER
V.	:	
	:	
TIME WARNER CABLE,	:	<u>FINAL ENTRY GRANTING</u>
	:	<u>MOTION TO DISMISS AND</u>
DEFENDANT	:	<u>FINDING PLAINTIFF TO BE A</u>
	:	<u>VEXATIOUS LITIGATOR</u>

In the above captioned matter, Plaintiff has asked for damages from the Court resulting from an outage he experienced in his cable service. In his complaint, Plaintiff makes outrageous demands for damages due to breach of contract, "infliction of emotional distress" and "ADA." As stated in Defendant's motion to dismiss, Plaintiff continues on, listing many sentences related to these claims that are virtually indecipherable and failing to give any indication that the actions of Defendant has met any of the elements of Plaintiff's claims. It is clear to the Court that Plaintiff has failed to state a claim for which relief can be granted by law, and therefore, Defendant's motion to dismiss is hereby granted.

In addition, Defendant has moved for an order finding Plaintiff to be a vexatious litigator. In a previous case before this court involving the same plaintiff, A0902495, plaintiff Saint Torrence was warned against engaging in vexatious conduct in future actions. In many cases, including the case at bar, Plaintiff has repeatedly wasted the resources of the State of Ohio, Hamilton County, and this court by filing frivolous lawsuits and motions having no foundation.

Vexatious conduct in R.C. § 2323.52 defines "vexatious litigator" as "any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common



pleas, municipal court or county court, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions." "Vexatious conduct" is defined as, "conduct that obviously serves merely to harass or maliciously injure another party to the civil action" or "conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law." This court finds that the actions of the plaintiff can be described by each of the above definitions provided by the Ohio Revised Code on numerous occasions in various cases.

Given the vexatious conduct of Saint Torrence, it is the order of this court, pursuant to R.C. § 2323.52(D), that Saint Torrence shall be considered a vexatious litigator, and as a consequence, it is the order of this court that Saint Torrence shall be prohibited from the following: (1) instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; (2) continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified above prior to this order; and (3) making any application, other than an application for leave to proceed under R.C. § 2323.52(F)(1), in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified above. Should the plaintiff wish to institute new litigation or continue existing litigation in any Ohio court, he must obtain leave from the presiding judge of the appropriate court.

The Clerk of Courts shall send a certified copy of this order to the Supreme Court of Ohio for publication deemed appropriate for the enforcement of this order.

Finally, the Court finds, as it did in A0902495, that Plaintiff is not indigent and shall pay the balance of costs associated with this matter. So ordered this fifth day of October, 2009.

