

IN THE SUPREME COURT OF OHIO

NORTHEAST OHIO NEIGHBORHOOD)
HEALTH SERVICES, INC., et al.)

Plaintiffs-Appellees,)

v.)

PRASAD BIKKANI, et al.)

Defendants-Appellants.)

CASE NO. 2010-0993

(Seeking Appeal from Eighth District Court of
Appeals - Case No. 94159)

RECEIVED
JUL 08 2010
CLERK OF COURT
SUPREME COURT OF OHIO

RESPONSE OF PLAINTIFFS-APPELLEES NORTHEAST OHIO NEIGHBORHOOD
HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC. TO DEFENDANTS-
APPELLANTS PRASAD BIKKANI AND VIJAYA BIKKANI'S MEMORANDUM IN
SUPPORT OF JURISDICTION

Kevin J. Breen (0034670)
3500 West Market Street
Suite 4
Akron, Ohio 44333
Phone: (333) 666-3600
Fax: (333) 670-6556
Email: Kevin.j.breen@gmail.com

Matthew T. Fitzsimmons (0013404)
R. Christopher Yingling (0066551)
Nicola, Gudbranson & Cooper, LLC
Landmark Office Towers
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, Ohio 44115
Phone: (216) 621-7227
Fax: (216) 621-3999
Email: fitzsimmons@nicola.com
yingling@nicola.com

Counsel for Defendants-
Appellants Prasad and Vijaya Bikkani

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

FILED
JUL 06 2010
CLERK OF COURT
SUPREME COURT OF OHIO

TABLE OF CONTENTS

I. APPELLEES’ STATEMENT REGARDING SUBSTANTIAL CONSTITUTIONAL QUESTION / PUBLIC OR GREAT GENERAL INTEREST..... 1

II. STATEMENT OF THE CASE..... 3

A. THE PARTIES..... 3

 1. NEON..... 3

 2. THCP 3

 3. Prasad Bikkani..... 3

 4. Vijaya Bikkani..... 4

B. THE LITIGATION 4

III. ARGUMENT 7

A. THE SUPREME COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE ORDER OF THE COURT OF APPEALS DENYING THE BIKKANIS’ APPLICATION FOR LEAVE TO FILE AN APPEAL IS NOT AN APPEALABLE ORDER. 7

B. THE SUPREME COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE NOTICE OF APPEAL AND MEMORANDUM IN SUPPORT OF JURISDICTION ARE UNTIMELY..... 8

C. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS’ PROPOSITION OF LAW NO. 1 BECAUSE WHETHER THE TRIAL COURT CORRECTLY FOUND THE BIKKANIS TO BE VEXATIOUS LITIGATORS IS NOT AN ISSUE ON APPEAL. . 9

D. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS’ PROPOSITION OF LAW NO. 2 BECAUSE THE RESTRICTIONS PLACED UPON THE BIKKANIS WHEN THE TRIAL COURT DECLARED THEM VEXATIOUS LITIGATORS COMPLY WITH R.C. 2323.52..... 13

E. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS’ PROPOSITION OF LAW NO. 3 BECAUSE A PERSON DESIGNATED A VEXATIOUS LITIGATOR UNDER R.C. 2323.52 DOES NOT CEASE TO BE A VEXATIOUS LITIGATOR ONCE HE/SHE IS REPRESENTED BY COUNSEL. 13

IV. CONCLUSION 15

TABLE OF AUTHORITIES

CASES

<u>Miles Landing Homeowners Assoc. v. Vijaya Bikkani, et al.</u> , Case No. CV-04-519870	5
<u>Miles Landing Homeowners Assoc. v. Vijaya Bikkani, et al.</u> , Case Nos. 86356 and 86942	5
<u>NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al.</u> , Case No. CA-09-94159	1, 6
<u>NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al.</u> , Case No. CV-07-628928, in the Court of Common Pleas, Cuyahoga County, Ohio.....	3, 4
<u>Prasad Bikkani v. Rotan E. Lee, Esq., et al.</u> , Case No. 2006-2073, in the Supreme Court of Ohio	3

OTHER AUTHORITIES

R.C. 2323.51(A)(1)(a).....	11
R.C. 2323.52	passim
R.C. 2323.52(A)(2)	10, 14
R.C. 2323.52(A)(3)	11
R.C. 2323.52(D)(1) and (3).....	13
R.C. 2323.52(G).....	passim
Sup.Ct.Prac.R. II §(2)(A).....	9
Sup.Ct.Prac.R. XIV §(5)(B).....	9, 14, 15

I. APPELLEES' STATEMENT REGARDING SUBSTANTIAL CONSTITUTIONAL QUESTION / PUBLIC OR GREAT GENERAL INTEREST

Appellants Prasad and Vijaya Bikkani (collectively the "Bikkanis") are **vexatious litigators**. They are prohibited, without first obtaining leave of the applicable court, from instituting or continuing any legal proceeding in the Court of Claims, a Court of Common Pleas, a Municipal Court, a County Court, or a Court of Appeals. In addition, Mr. Bikkani is prohibited from filing an action in the Supreme Court without first obtaining leave of court.

This case does not involve a substantial constitutional question or a matter of public or great general interest. In fact, this case does not even involve an appealable order. The Bikkanis seek to appeal the Judgment Entry entered by the Eighth District Court of Appeals on January 4, 2010 in NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al., Case No. CA-09-94159 dismissing their appeal, sua sponte. The Eighth District dismissed the appeal after denying, earlier that same day, the Bikkanis' Application for Leave to File the Appeal. While the Bikkanis are technically correct that the Eighth District's dismissal entry does not state the reason why it dismissed the appeal, it is plainly evident from the record/docket that the Eighth District dismissed the appeal because it denied the Bikkanis' Application for Leave. Indeed, absent an Order granting the Application for Leave, the Bikkanis were prohibited from filing the appeal.

R.C. 2323.52(G) specifically states -- in clear and unambiguous language -- that a vexatious litigator cannot appeal the decision of a Court of Appeals denying his/her application for leave to institute an appeal. In other words, the Bikkanis are statutorily barred from appealing the Eighth District's decision not to accept their appeal. Accordingly, the Supreme Court lacks jurisdiction to hear this appeal. None of the Bikkanis' Propositions of Law address this fundamental, fatal flaw in the appeal.

Furthermore, even if the Supreme Court had jurisdiction to hear this appeal -- which it does not -- the only issue before the Court would be whether the Eighth District abused its discretion in denying the Bikkanis' Application for Leave to File the Appeal. Tellingly, none of the Propositions of Law asserted in the Bikkanis' Memorandum in Support of Jurisdiction address this issue -- obviously because R.C. 2323.52(G) bars such an appeal. None of the Bikkanis' Propositions of Law involve issues raised at, and ruled upon by, the Eighth District. Whether the trial court correctly found the Bikkanis to be vexatious litigators -- the issue which the Bikkanis are trying to argue -- was not addressed by the Eighth District because the Eighth District denied the Bikkanis' Application for Leave to file the Appeal. The Supreme Court should not issue an advisory opinion on this issue.

In addition to all of these defects in the Bikkanis' appeal, the appeal is further defective because it is untimely and, therefore, the Supreme Court lacks jurisdiction to hear it. As demonstrated in appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc.'s ("THCP") Motions to Dismiss (filed on June 11, 2010 and which are hereby incorporated by reference), the Bikkanis waited until after the 45-day appeal period expired, and until after the Supreme Court was divested of jurisdiction to hear the appeal, to file an Application for Leave of Court to File a Notice of Appeal in the Ohio Supreme Court, the Motion for Extension, the Notice of Appeal, and the Memorandum in Support of Jurisdiction. It makes no sense for the Supreme Court to accept the appeal based upon the untimely Notice of Appeal and Memorandum in Support of Jurisdiction when the Court ultimately will have to dismiss the appeal as being improvidently allowed.

This appeal has multiple jurisdictional defects. It does not present a novel, cutting edge, procedurally clean, legal issue for the Supreme Court to announce a new principle of law for Ohio courts to follow. The Supreme Court, therefore, should decline jurisdiction.

II. STATEMENT OF THE CASE

A. THE PARTIES

1. NEON

NEON was formerly known as Cleveland Neighborhood Health Services, Inc. dba The Hough Norwood Clinics. NEON has been serving the medically underserved of our community for forty-two years. NEON operates six community health centers in Cleveland and East Cleveland which provide primary medical and dental care to those less fortunate among us, *i.e.*, primarily Medicaid families. NEON is a non-profit, charitable 501(c)(3) organization.

2. THCP

At all times relevant hereto, THCP was a non-profit Medicaid HMO and Mr. Bikkani's employer. THCP is no longer an operating HMO.

3. Prasad Bikkani

Prasad Bikkani is a vexatious litigator. The Supreme Court of Ohio declared him a vexatious litigator on March 5, 2007.¹ The Cuyahoga County Court of Common Pleas declared him a vexatious litigator on September 28, 2009.² Mr. Bikkani is prohibited from filing any action in an Ohio court without first obtaining leave of court. The Supreme Court of Ohio (\$14,480.21),

¹ See, Prasad Bikkani v. Rotan E. Lee, Esq., et al., Case No. 2006-2073, in the Supreme Court of Ohio.

² See, NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al., Case No. CV-07-628928, in the Court of Common Pleas, Cuyahoga County, Ohio (Appendix A to NEON/THCP Motions to Dismiss) (filed June 10, 2010).

the Eighth District Court of Appeals (\$2,760), and the Cuyahoga County Court of Common Pleas (\$64,733.32) have sanctioned Bikkani a combined **\$81,973.53** for his frivolous conduct in this litigation. This is, incredibly, the **seventeenth** action to burden Ohio's judicial system arising out of Mr. Bikkani's seemingly endless crusade to inflict pain on NEON and THCP.³

4. **Vijaya Bikkani**

Vijaya Bikkani is a vexatious litigator. She is also the wife of Prasad Bikkani. The Cuyahoga County Court of Common Pleas declared her a vexatious litigator on September 28, 2009.⁴ Ms. Bikkani is prohibited from filing any action in an Ohio court -- except for the Supreme Court -- without first obtaining leave of court.

B. **THE LITIGATION**

On July 3, 2007, NEON and THCP filed a Complaint against the Bikkanis to have them declared vexatious litigators. The case was necessitated by the Bikkanis' pro se litigation and their endless prosecution of frivolous claims and appeals against NEON, THCP, and many others.

The trial court conducted a two-day bench trial on September 14 and 15, 2009. The evidence presented against the Bikkanis was indisputable -- and overwhelming. It was based largely upon the filings and conduct of the Bikkanis, the rulings of the various courts before which they appeared, and the Bikkanis' testimony. The evidence and testimony presented were not -- as the Bikkanis assert -- limited to their litigation with NEON and THCP. NEON and

³ An Executive Summary of the long history of all the Bikkani-NEON/THCP litigation is attached as Appendix B to NEON and THCP's Motion to Dismiss the Appeal of Mr. Bikkani for Lack of Jurisdiction (filed June 11, 2010).

⁴ See, NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al., Case No. CV-07-628928, in the Court of Common Pleas, Cuyahoga County, Ohio (Appendix A to NEON/THCP Motions to Dismiss) (filed June 10, 2010).

THCP presented evidence demonstrating that the Bikkani not only engaged in vexatious conduct in the cases involving NEON and THCP, but also engaged in nearly identical conduct in cases completely unrelated to NEON and THCP, such as Miles Landing Homeowners Assoc. v. Vijaya Bikkani, et al., Case No. CV-04-519870, in the Court of Common Pleas, Cuyahoga County and Miles Landing Homeowners Assoc. v. Vijaya Bikkani, et al., Case Nos. 86356 and 86942, in the Eighth District Court of Appeals (collectively the “Miles Landing case”). The Bikkani engaged in vexatious conduct regardless of whether they were plaintiffs or defendants. The vexatious conduct included: prosecuting time-barred claims after being notified that they could not maintain them (NEON case); prosecuting claims which they plainly lacked standing to bring (NEON case); repeatedly refusing to engage in discovery (NEON case); repeatedly moving to disqualify opposing counsel (NEON and Miles Landing cases); repeatedly moving to disbar opposing counsel (NEON and Miles Landing cases); repeatedly accusing opposing counsel of unethical conduct, including committing a fraud upon the court (NEON and Miles Landing cases); accusing Presiding Judge Nancy Fuerst of the Cuyahoga County Court of Common Pleas of unethical conduct, including covering up a fraud and being influenced by campaign contributions and her relationship with opposing counsel (Miles Landing case); repeatedly accusing opposing counsel of engaging in felonious criminal conduct, including extortion, embezzlement, money laundering, bribery, fraud, and RICO violations (NEON and Miles Landing cases); repeatedly making the same baseless and inflammatory arguments (NEON and Miles Landing cases); repeatedly failing to comply with the orders of the courts (NEON and Miles Landing cases); and repeatedly filing appeals of non-final, non-appealable orders (NEON and Miles Landing cases).

On September 28, 2009, the Cuyahoga County Court of Common Pleas entered an Order declaring the Bikkani's vexatious litigators (Appendix A to NEON/THCP Motions to Dismiss) (filed June 10, 2010). That Order provides in pertinent part:

- 1) Defendants Prasad Bikkani and Vijaya Bikkani are declared to be vexatious litigators and are prohibited from doing any and all of the following, without first obtaining leave of the applicable court:
 - (A) Instituting legal proceeding in the court of claims, or in a court of common pleas, municipal court, or county court;
 - (B) Continuing any legal proceedings the Defendants Bikkani had instituted in any courts specified above prior to the entry of this order;
 - (C) Making any application, other than application for leave to proceed allowed under Division (F)(1) of O.R.C. 2323.52 in any legal proceedings instituted by the Defendants Bikkani or another person in any of the courts specified in (A) above;
 - (D) Instituting legal proceedings in a court of appeals . . . without first obtaining leave of the court of appeals to proceed pursuant to Division (F)(2) of O.R.C. 2323.52.
- 2) This order shall remain in force indefinitely against Defendants Bikkani.

On October 26, 2009, the Bikkani's filed an Application for Leave to Proceed in the Court of Appeals in NorthEast Ohio Neighborhood Health Services, Inc., et al. v. Prasad Bikkani, et al., Case No. CA-09-94159, seeking to appeal the Order of the Common Pleas Court declaring them vexatious litigators. NEON and THCP opposed the Bikkani's Application. On January 4, 2010, the Eighth District entered three Journal Entries. The Eighth District: (1) denied the Bikkani's Application for Leave; (2) denied as moot the Bikkani's Motion to Extend Time to File the Record; and (3) dismissed the Bikkani's appeal sua sponte.

On March 2, 2010 -- after the 45-day appeal period had expired -- the Bikkani's submitted an Application for Leave of Court to File a Notice of Appeal in the Ohio Supreme Court with regard to the January 4, 2010 Orders. Mr. Bikkani was required to file an Application for Leave

because the Supreme Court had previously declared him a vexatious litigator. Why Ms. Bikkani improperly joined Mr. Bikkani in filing the Application for Leave is unclear, as she did not need leave of Court to institute an appeal with the Supreme Court. The Application for Leave is a nullity as to Ms. Bikkani. In the Supreme Court's March 8, 2010 Case Announcements, 2010-Ohio-808, the Court granted Mr. Bikkani's attorney leave to file a Notice of Appeal on behalf of Mr. Bikkani "so long as it complies with the Supreme Court Rules of Practice." (emphasis added).

On March 19, 2010, the Bikkanis filed a Motion for Extension of Time to File the Notice of Appeal and Memorandum in Support of Jurisdiction. In the Supreme Court's April 22, 2010 Case Announcements, 2010-Ohio-1740, the Court granted the Motion for Extension. The Supreme Court's Announcement fails to identify any legal support for allowing the extension. The Announcement directly conflicts with the March 8, 2010 Case Announcement (2010-Ohio-808) and the Supreme Court Rules of Practice's mandatory 45-day appeal period.

On June 7, 2010 -- six months after the Eighth District entered its Order dismissing the Bikkanis' appeal and nearly four months after the 45-day appeal period expired -- the Bikkanis filed a Notice of Appeal and Memorandum in Support of Jurisdiction. On June 11, 2010, NEON and THCP filed Motions to Dismiss the Bikkanis' appeals. The Motions to Dismiss are pending before the Court.

III. ARGUMENT

A. **THE SUPREME COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE ORDER OF THE COURT OF APPEALS DENYING THE BIKKANIS' APPLICATION FOR LEAVE TO FILE AN APPEAL IS NOT AN APPEALABLE ORDER.**

R.C. 2323.52(G) provides that:

During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

Despite the Bikkani's feigned ignorance as to why the Eighth District dismissed their appeal, it is patently clear from the record/docket that the Eighth District dismissed the appeal because, earlier that same day, it denied the Bikkani's Application for Leave to institute the appeal. Based upon the clear and unambiguous language of R.C. 2323.52(G), the Bikkani cannot appeal the Eighth District's denial of their Application for Leave to institute the appeal. The Supreme Court, therefore, lacks jurisdiction to hear this appeal, and the Court should not accept it for review.

B. THE SUPREME COURT LACKS JURISDICTION TO HEAR THIS APPEAL BECAUSE THE NOTICE OF APPEAL AND MEMORANDUM IN SUPPORT OF JURISDICTION ARE UNTIMELY.

As demonstrated in NEON's and THCP's Motions to Dismiss (filed on June 11, 2010), the Notice of Appeal and Memorandum in Support of Jurisdiction are untimely. The Order which the Bikkani seek to appeal was entered on January 4, 2010. The Bikkani's Notice of Appeal and Memorandum in Support of Jurisdiction were due February 18, 2010. The Bikkani missed that deadline. The Bikkani's Application for Leave of Court to File a Notice of Appeal in the Ohio Supreme Court, the Motion for Extension, the Notice of Appeal, and the Memorandum in Support of Jurisdiction were all filed after February 18, 2010 and after the Supreme Court was divested of jurisdiction to hear the appeal. The Supreme Court previously declared Mr. Bikkani a

vexatious litigator under Sup.Ct.Prac.R. XIV §(5)(B).⁵ Mr. Bikkani, therefore, is prohibited from continuing/instituting an action in the Supreme Court without first obtaining leave of court. The Supreme Court has never declared Ms. Bikkani a vexatious litigator and, therefore, she is not required to obtain leave of court to file an appeal with the Supreme Court. Ms. Bikkani incorrectly joined Mr. Bikkani in filing the Application for Leave. The Application for Leave is a nullity as to her. Ms. Bikkani had 45 days from when the Eighth District entered its Order on January 4, 2010 -- or until February 18, 2010 -- to file her Notice of Appeal and Memorandum in Support of Jurisdiction. She missed that deadline by more than fifteen weeks.

Sup.Ct.Prac.R. II §(2)(A)'s 45-day appeal period is a mandatory jurisdictional requirement. It is not discretionary. If the Supreme Court were to accept the appeal based upon the untimely Notice of Appeal and Memorandum in Support of Jurisdiction, the Court ultimately would have to dismiss the appeal as being improvidently allowed. Accordingly, the Supreme Court should not accept this appeal for review.

C. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS' PROPOSITION OF LAW NO. 1 BECAUSE WHETHER THE TRIAL COURT CORRECTLY FOUND THE BIKKANIS TO BE VEXATIOUS LITIGATORS IS NOT AN ISSUE ON APPEAL.

If the Supreme Court accepts jurisdiction of this appeal, the only issue properly before the Court would be whether the Eighth District abused its discretion in denying the Bikkani's Application for Leave to File the Appeal. The Application for Leave is the only matter considered by the Eighth District.

Because the Eighth District denied the Application for Leave, the Bikkani's: never had the transcript from the vexatious litigator hearing transcribed; never had the record transmitted to

⁵ See, Prasad Bikkani v. Rotan Lee, et al., Case No. 2006-2073, at February 28, 2007 and March 5, 2007 Judgment Entries.

the Court of Appeals; and never filed an appellate brief asserting any errors. Whether the trial court correctly found the Bikkanis to be vexatious litigators neither was raised at, nor was ruled upon by, the Eighth District. The Supreme Court should not issue an advisory opinion on this issue.

There is no evidentiary or legal support for the Bikkanis' argument that there was insufficient evidence to have them declared vexatious litigators. To say that the Bikkanis' Memorandum in Support of Jurisdiction presents an inaccurate description of the evidence and the law would be a gross understatement. Candidly, their Memorandum in Support of Jurisdiction is uncomfortably disingenuous. The most egregious misrepresentations include the following.

First, the Bikkanis falsely assert that the vexatious litigator statute pertains only to actions taken by pro se litigants. R.C. 2323.52 makes no distinction between whether a party is appearing pro se or is represented by counsel. R.C. 2323.52(A)(2) provides that:

“Vexatious conduct” means conduct of a party in a civil action that satisfies any of the following:

- (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
- (b) The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.
- (c) The conduct is imposed solely for delay.

(emphasis added). The “conduct” in vexatious conduct includes:

The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action.

R.C. 2323.51(A)(1)(a). Just because a “party” may be represented by counsel obviously does not give him/her a free pass to engage in vexatious conduct. But even more important, this is not an issue in this case. All of the evidence of vexatious conduct presented at the hearing was conduct of the Bikkaniis occurring while they were appearing pro se. The Bikkaniis, not counsel, signed all of the pleadings which were introduced into evidence against them.

Second, the Bikkaniis wrongly assert that they cannot be found to be vexatious litigators based upon their conduct in one action. R.C. 2323.52(A)(3) defines a vexatious litigator as follows:

[A]ny 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. (emphasis added).

Based upon the plain language of the statute -- the same language which the Bikkaniis quote and then immediately ignore -- a person can be declared a vexatious litigator for his/her conduct in a civil action or actions. The statute, on its face, clearly contemplates that a person can engage in vexatious conduct in just one case. There is no immunity -- no free bite at the apple -- for a litigant who engages in vexatious conduct in just one case. Once again, however, this argument by the Bikkaniis is pointless because their vexatious conduct occurred in multiple actions. In the Bikkani v. NEON litigation there have been at least six actions prosecuted by the Bikkaniis in the trial courts and the Court of Appeals. In the Miles Landing litigation there have been at least six actions involving the Bikkaniis. Actions are not, as the Bikkaniis argue, limited to trial court actions.

Third, the Bikkani's assert that the designation of them as vexatious litigators is based upon two actions. This is provably false, but even if it were true, a person can be declared a vexatious litigator based upon his/her conduct in as few as one action.

Fourth, the Bikkani's argue that their actions in federal court have no bearing on being designated a vexatious litigator. NEON and THCP agree. NEON and THCP have never argued that such actions counted for purposes of the vexatious litigator statute, and there is nothing in the Order of the trial court indicating that its determination is based upon the Bikkani's' actions in federal court.

Fifth, the Bikkani's state that there was no lawful basis to designate Vijaya Bikkani a vexatious litigator. The Bikkani's are wrong. Ms. Bikkani's own testimony at the vexatious litigation hearing clearly established her involvement in the vexatious litigation occurring in the Miles Landing litigation.

Finally, the Bikkani's state that there was insufficient evidence to designate them vexatious litigators. The Bikkani's are obviously wrong. The Bikkani's were designated vexatious litigators based upon their testimony and their filings. The evidence was overwhelming and undisputable. The Bikkani's could not deny or defend their actions. In declaring the Bikkani's vexatious litigators, the trial court artfully described the Bikkani's' conduct this way (Appendix A to NEON/THCP Motions to Dismiss):

Where the defendants went in the litigation process they left a wide path of destruction and have sown so much salt upon the land it would be barren for generations. The evidence adduced at trial indicates that there is no rational reason for the actions, conduct and allegations of the Defendants Bikkani.

* * *

Regardless of whether the Defendants Bikkani instituted an action or they were the named defendants, they behaved similarly in filing baseless actions and motions, refusing to participate in discovery, and making allegations so vile that common decency prevents the Court from repeating them here. (emphasis added)

While this appeal is neither the time nor the place for the Supreme Court to weigh in on whether the trial court correctly found the Bikkanis to be vexatious litigators, if the Court does accept this appeal, it should not base any finding on the Bikkanis' gross misrepresentations of facts which are not supported by the record.

D. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS' PROPOSITION OF LAW NO. 2 BECAUSE THE RESTRICTIONS PLACED UPON THE BIKKANIS WHEN THE TRIAL COURT DECLARED THEM VEXATIOUS LITIGATORS COMPLY WITH R.C. 2323.52.

The trial court's order declaring the Bikkanis vexatious litigators mirrors the language of R.C. 2323.52(D)(1) and (3). The trial court did not amend, modify, or limit the restrictions imposed upon the Bikkanis, as the Bikkanis claim other courts have improperly done when declaring persons vexatious litigators. The Bikkanis' request for the Supreme Court to render an opinion with regard to whether a trial court can amend, modify, or limit the restrictions placed on a vexatious litigator is a request for an advisory opinion. The Supreme Court should not accept this appeal to make an advisory opinion regarding an inapplicable -- and artificially manufactured -- issue.

E. THE SUPREME COURT SHOULD NOT ACCEPT THIS DISCRETIONARY APPEAL BASED UPON THE BIKKANIS' PROPOSITION OF LAW NO. 3 BECAUSE A PERSON DESIGNATED A VEXATIOUS LITIGATOR UNDER R.C. 2323.52 DOES NOT CEASE TO BE A VEXATIOUS LITIGATOR ONCE HE/SHE IS REPRESENTED BY COUNSEL.

In their Proposition of Law No. 3, the Bikkanis argue that vexatious litigators are not required to obtain leave of court to initiate a legal proceeding when they are represented by legal counsel. Not surprisingly, the Bikkanis offer no legal support for this argument. There is none.

Neither R.C. 2323.52 nor the trial court's order declaring the Bikkanis vexatious litigators and requiring them to obtain leave of court to institute a legal proceeding is limited to

situations where the Bikkani are appearing pro se. The Bikkani must obtain leave of court regardless of whether they are represented by counsel or appearing pro se.

Furthermore, the Bikkani's argument that only pro se litigants can be found to be vexatious litigators plainly conflicts with R.C. 2323.52. R.C. 2323.52(A)(2) defines vexatious conduct as conduct of a party -- not conduct of a pro se party -- that: obviously serves merely to harass or maliciously injure another party; is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law; and/or is imposed solely for delay. Obviously, a represented party can be found guilty of engaging in these types of conduct. A "party" does not cease to be a "party" when he/she is represented by counsel. And vexatious conduct does not cease to be vexatious conduct when an attorney signs off on it. Just as a represented party can be found to have engaged in frivolous conduct, so, too, can a represented party be found to have engaged in vexatious conduct.

The Bikkani also are wrong in their assertion that the trial court, the Court of Appeals, and the Supreme Court in this case have inconsistently answered the question of whether a person designated a vexatious litigant under R.C. 2323.52 must obtain leave of court to institute a legal proceeding when represented by counsel. Neither R.C. 2323.52 nor the Order of the Court of Common Pleas declaring the Bikkani vexatious litigants applies to actions in the Supreme Court. The only reason why Prasad Bikkani was required to seek leave of court to institute an action in the Supreme Court is because the Supreme Court previously declared Mr. Bikkani a vexatious litigant under Sup.Ct.Prac.R. XIV §(5)(B). That Order of the Supreme Court was wholly independent of R.C. 2323.52 and the trial court's subsequent Order declaring the Bikkani vexatious litigants under R.C. 2323.52. How the Supreme Court interprets and applies its Order declaring Mr. Bikkani a vexatious litigant has no bearing on the Court of

Common Pleas' Order and the requirement that the Bikkani obtain leave of court before instituting a legal proceeding in a trial court or Court of Appeals. The Bikkani are comparing apples to oranges. The Supreme Court obviously should not accept this appeal to opine on the different nuances between a person designated a vexatious litigator under R.C. 2323.52 and a person designated a vexatious litigator under Sup.Ct.Prac.R. XIV §(5)(B).

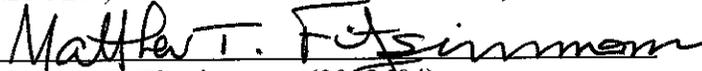
IV. CONCLUSION

Under R.C. 2323.52(G), the decision of the Eighth District denying the Bikkani's Application for Leave to Institute an Appeal is not an appealable order. The Supreme Court, therefore, lacks jurisdiction to hear this case. The Supreme Court also lacks jurisdiction to hear the case because the Notice of Appeal and Memorandum in Support of Jurisdiction are untimely.

This case does not present a novel, cutting edge, procedurally clean, legal issue for the Supreme Court to announce a new principle of law for Ohio courts to follow. It does not involve a matter of public or great general interest. Rather, it involves the application of well-settled principles of the vexatious litigator statute, R.C. 2323.52, to a particular set of specific facts. Accordingly, NEON and THCP urge the Court, in the strongest terms possible, to decline jurisdiction and to dismiss this appeal.

Respectfully submitted,

NICOLA, GUDBRANSON & COOPER, LLC



Matthew T. Fitzsimmons (0013404)

R. Christopher Yingling (0066551)

Republic Building, Suite 1400

25 West Prospect Avenue

Cleveland, Ohio 44115

Phone: (216) 621-7227

Fax: (216) 621-3999

Email: fitzsimmons@nicola.com; yingling@nicola.com

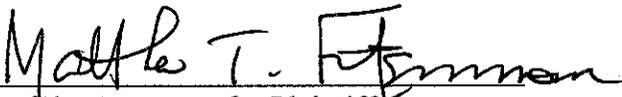
Attorneys for Plaintiffs-Appellees NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Response of Plaintiffs-Appellees NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. to Defendants-Appellants Prasad Bikkani and Vijaya Bikkani's Memorandum in Support of Jurisdiction was sent by regular U.S. mail, postage prepaid, this 6th day of July 2010 to the following:

Kevin J. Breen, Esq.
3500 W. Market Street, Suite 4
Akron, OH 44333

Attorney for Defendants-Appellants



One of the Attorneys for Plaintiffs-
Appellees NorthEast Ohio Neighborhood
Health Services, Inc. and Total Health Care Plan, Inc.