

ORIGINAL

ORIGINAL

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)

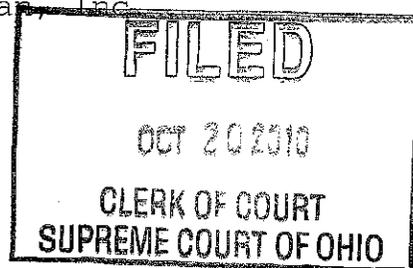
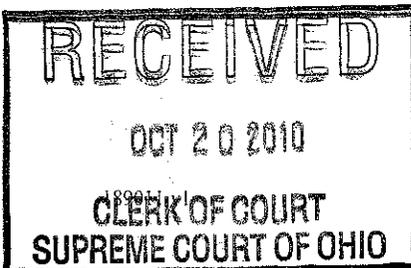
BRIEF OF PLAINTIFFS-APPELLEES NORTHEAST OHIO NEIGHBORHOOD HEALTH SERVICES, INC. AND TOTAL HEALTH CARE PLAN, INC. IN OPPOSITION TO DEFENDANT-APPELLANT VIJAYA BIKKANI'S MOTION FOR RECONSIDERATION

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.



I. PRELIMINARY STATEMENT

Appellant Vijaya Bikkani -- a vexatious litigator -- asks the Court to reconsider its September 29, 2010 Entry declining jurisdiction and dismissing the appeal as not involving any substantial constitutional question.¹ For the reasons set forth herein, and the reasons set forth in their Motion to Dismiss the Appeal of Vijaya Bikkani for Lack of Jurisdiction (filed on June 11, 2010) and their Response to Prasad Bikkani and Vijaya Bikkani's Memorandum in Support of Jurisdiction (filed on July 6, 2010), appellees NorthEast Ohio Neighborhood Health Services, Inc. ("NEON") and Total Health Care Plan, Inc. ("THCP") urge the Court to deny Ms. Bikkani's Motion for Reconsideration.

II. ARGUMENT

A. THE SUPREME COURT SHOULD DENY MS. BIKKANI'S MOTION FOR RECONSIDERATION BECAUSE THE SUPREME COURT LACKS JURISDICTION TO HEAR THE APPEAL.

1. The Order of the Eighth District Court of Appeals Denying Ms. Bikkani's Application for Leave to File an Appeal Is Not an Appealable Order.

Ms. Bikkani seeks to appeal the Order of the Eighth District Court of Appeals denying her Application for Leave to institute an appeal in regard to the Judgment Entry of the Cuyahoga County Court of Common Pleas declaring her a vexatious

¹ The Supreme Court also denied as moot appellees' Motion to Dismiss the Appeal of Ms. Bikkani for lack of jurisdiction. If the Supreme Court reconsiders the appeal, the arguments presented in the Motion to Dismiss are no longer moot.

litigator. A fundamental flaw in Ms. Bikkani's attempted appeal is that R.C. 2323.52(G) (Tab A) specifically bars her from appealing the Eighth District's decision denying her application for leave to institute the appeal. The decision is not an appealable order. Accordingly, the Supreme Court should deny the Motion for Reconsideration because it lacks jurisdiction to hear the appeal.

2. Ms. Bikkani Did Not Timely File the Notice of Appeal and Memorandum in Support of Jurisdiction.

The Order which Ms. Bikkani seeks to appeal was entered by the Eighth District on January 4, 2010. Ms. Bikkani had 45 days from when the Order was entered -- 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 reverse its Entry and accept this 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 deny the Motion for Reconsideration.

B. THE SUPREME COURT SHOULD DENY MS. BIKKANI'S MOTION FOR RECONSIDERATION BECAUSE WHETHER THE TRIAL COURT CORRECTLY FOUND HER TO BE A VEXATIOUS LITIGATOR IS NOT AN ISSUE ON APPEAL.

In her Motion for Reconsideration -- just as in her Memorandum in Support of Jurisdiction -- Ms. Bikkani attempts to argue the merits of whether the trial court acted appropriately in declaring her a vexatious litigator. If the Supreme Court were to reverse its Entry and accept jurisdiction of this appeal, however, the only issue properly before the Court would be whether the Eighth District abused its discretion in denying Ms. 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, Ms. Bikkani: never had the transcript from the vexatious litigator hearing transcribed; never had the record transmitted to the Court of Appeals; and never filed an appellate brief asserting any errors. Whether the trial court correctly found her to be a vexatious litigator neither was raised at, nor was ruled upon by, the Eighth District. The Supreme Court should not render an advisory opinion on this issue. Accordingly, the Supreme Court should deny the Motion for Reconsideration.

C. THE SUPREME COURT SHOULD DENY MS. BIKKANI'S MOTION FOR RECONSIDERATION BECAUSE SHE IS NOT A "VICTIM."

The arguments presented by Ms. Bikkani in support of the Motion for Reconsideration are uncomfortably disingenuous. They have no basis in fact or law.

Contrary to Ms. Bikkani's contention, the trial court did not declare her a vexatious litigator based upon her conduct in one action. Ms. Bikkani's statement that "the trial court's conclusion that conduct in only one action is sufficient to label Mrs. Bikkani 'vexatious' is plainly in error" completely mischaracterizes the trial court's Judgment Entry. What the trial court actually stated in its Judgment Entry (Tab B) was that:

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. Such conduct in only one action is sufficient to render the Defendants Bikkani vexatious litigators. Prasad Bikkani prepared the documents containing the vexatious allegations and Vijaya Bikkani freely signed those pleading, thus making the allegations her allegations.

The trial court's statement that "[s]uch conduct in only one action is sufficient to render the Defendants Bikkani vexatious litigators" was simply a recognition by the trial court that, pursuant to R.C. 2323.52, the threshold for a person to be declared a vexatious litigator is vexatious conduct in one action. Indeed, that quote from the trial court directly follows its citation to the definition of a vexatious litigator under R.C.2323.52(A), which specifically states that a person can be declared a vexatious litigator based upon her "vexatious conduct in a civil action or actions." (emphasis added). Regardless,

this argument by Ms. Bikkani is pointless because evidence was presented that she engaged in vexatious conduct in multiple actions.²

Ms. Bikkani claims that she "has been unfairly and unconstitutionally painted with a broad brush solely for actions of her husband," and fellow vexatious litigator, Prasad Bikkani. Ms. Bikkani claims that she is the "victim" of a "miscarriage of justice." Nothing could be farther from the truth. In being declared a vexatious litigator, Ms. Bikkani received the just deserts of her own misconduct -- not the misconduct of anyone else.

The evidence presented at trial showed that during the multiple actions in which Ms. Bikkani was a party, she repeatedly engaged in vexatious conduct, including: moving to disqualify/disbar opposing counsel; accusing opposing counsel of unethical conduct, including committing a fraud upon the court; 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; accusing opposing counsel of engaging in felonious criminal conduct, including extortion, embezzlement, money laundering, bribery, fraud, and

² See, e.g., Miles Landing Homeowners Ass'n v. Vijaya Bikkani, Case No. CV-04-519870 (Court of Common Pleas of Cuyahoga County).

RICO violations; regurgitating the same baseless and inflammatory arguments over and over again; failing to comply with the Orders of the courts; and filing appeals of non-final, non-appealable orders.

Ms. Bikkani is not a victim. The only victims are the Judges, attorneys, and parties (including, but not limited to, NEON and THCP) who have been on the receiving end of her vile misconduct. The evidence presented at trial against Ms. Bikkani was overwhelming and undisputable. She sat in the witness chair. She could neither deny nor defend her actions. The notion that she is a "victim" is, in a word, preposterous.

While this appeal is neither the time nor the place for the Supreme Court to weigh in on whether the trial court correctly found Ms. Bikkani to be a vexatious litigator, the Court clearly should not reverse its Order and accept this appeal based upon Ms. Bikkani's fictitious account of the record. Accordingly, the Court should deny the Motion for Reconsideration.

III. CONCLUSION

Ms. Bikkani's Motion for Reconsideration raises no new arguments and cites no new case law that the Supreme Court has not already considered in making its September 29, 2010 ruling. The Motion for Reconsideration appears to be motivated by Vijaya

and Case Nos. 86356 and 86942 (8th District Court of Appeals).

Bikkani's -- and her counsel's -- consistent desire to have the last word on any subject. Enough is enough.

For the foregoing reasons, NEON and THCP urge the Court, in the strongest terms possible, to deny the Motion for Reconsideration.

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 Brief of Plaintiffs-Appellees NorthEast Ohio Neighborhood Health Services, Inc. and Total Health Care Plan, Inc. in Opposition to Defendant-Appellant Vijaya Bikkani's Motion for Reconsideration was sent by regular U.S. mail, postage prepaid, this 20th day of October 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.

▷
Baldwin's Ohio Revised Code Annotated Currentness
Title XXIII. Courts--Common Pleas
 Chapter 2323. Judgment (Refs & Annos)
 Miscellaneous Provisions
 → **2323.52 Vexatious litigators**

(A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(2) "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.

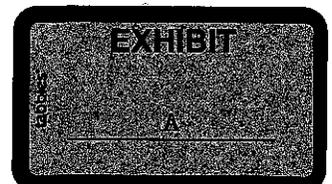
(c) The conduct is imposed solely for delay.

(3) "Vexatious litigator" means 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 litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:



- (a) Instituting 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 the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;
- (c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

(2) If the court of common pleas finds a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims.

(3) A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)(1) A court of common pleas that entered an order under division (D)(1) of this section 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 claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in division (F)(1) of this section, the period of time commencing with the filing with that court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave

to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. 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. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(G) 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.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

CREDIT(S)

(2002 S 168, eff. 6-28-02; 1996 H 570, eff. 3-18-97)

Current through 2010 File 54 of the 128th GA (2009-2010), apv. by 10/13/10 and filed with the Secretary of State by 10/13/10.

© 2010 Thomson Reuters

END OF DOCUMENT

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

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

Plaintiffs

vs

PRASAD BIKKANI, et al.

Defendants

JUDGE JOHN D. SUTULA

CASE NO. CV-07-628928

JOURNAL ENTRY

John D. Sutula, J.

The Court finds the Defendants, Prasad Bikkani and Vijaya Bikkani, have both participated in conduct that to a reasonable person:

- 1) obviously served to merely harass or maliciously injure another party to a civil action; and,
- 2) was not warranted under existing law and was not supported by a good faith argument for an extension, modification or reversal of existing law; and,
- 3) was posed solely for delay.

This conduct has been exhibited in at least two civil actions as well as appellate off-shoots of those actions. This Court affirms the language of Judge David Matia in Case No. 566249, 5-29-09 entry, in describing the conduct of the defendants: 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.

EXHIBIT

B

O.R.C. 2323.52(A)(3) reads in part:

"Vexatious litigator" means any person who has habitually, persistently and without reasonable grounds engaged in vexatious conduct in a civil action or actions . . . 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)

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. Such conduct in only one action is sufficient to render the Defendants Bikkani vexatious litigators. Prasad Bikkani prepared the documents containing the vexatious allegations and Vijaya Bikkani freely signed those pleading, thus making the allegations her allegations.

Prasad Bikkani is obviously a bright and intelligent individual, but he has lost his way with all of this litigation. It has completely sidetracked his life and mired him in what can only be considered mean and vengeful conduct. The Court can only hope that he can return to productive work, but his conduct in these cases falls into the vexatious category and he has dragged his wife with him.

The Court, therefore, orders, adjudges, and decrees that:

- 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 of the courts specified above prior to the entry of this order;

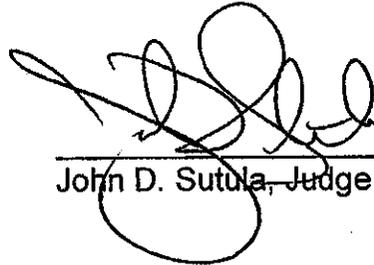
- (C) Making any application, other than an application for leave to proceed allowed under Division (F)(1) of O.R.C. 2323.52 in any legal proceedings instituted by the Defendants Bikkani or another person in any of the courts specified in (A) above;
- (D) Instituting legal proceedings in a court of appeals, continuing any legal proceedings that the Defendants Bikkani had instituted in a court of appeal prior to entry of this order, or make any application, other than the application for leave to proceed allowed by Division (F)(2) of O.R.C. 2323.52, in any legal proceeding instituted by Defendants Bikkani or another person 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.

IT IS SO ORDERED.

Date: _____

9.25.09



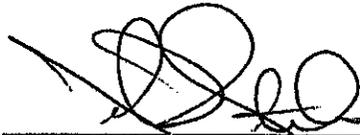
John D. Sutula, Judge

CERTIFICATE OF SERVICE

A copy of the foregoing Journal Entry was sent by regular U.S. Mail this 25 day
of September, 2009, to:

Matthew T. Fitzsimmons, Esq.
R. Christopher Yingling, Esq.
Republic Building, Suite 1400
25 West Prospect Avenue
Cleveland, OH 44115-1048
Attorneys for Plaintiffs

Kevin J. Breen, Esq.
3500 West Market Street, Suite 4
Akron, OH 44333
Attorney for Defendants Bikkani



John D. Sutula, Judge

