ORIGINAL

IN THE SUPREME COURT OF OHIO

OHIO ATTORNEY GENERAL

Plaintiff-Appellee

vs.

NORMAN V. WHITESIDE

Defendant-Appellant

Case No. 10-2120

On Appeal from the Franklin County Court of Appeals, Tenth Appellate District

Court of Appeals
Case No. 10AP-517

MEMORANDUM IN SUPPORT OF JURISDICTION OF APPELLANT NORMAN V. WHITESIDE

NORMAN V. WHITESIDE
Box 120-184313
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PRO SE FOR APPELLANT

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EXPLANATION OF WHY THIS CASE IS A CASE OF PUBLIC OR GREAT GENERAL INTEREST AND INVOLVES A SUBSTANTIAL CONSTITUTIONAL QUESTION

This case presents one of the worst examples of erosion of constitutional rights: the right of access to the courts. What has been decided in the court of appeals is that it doesn't matter whether or not a court has subject matter jurisdiction. When government officials are upset with those who point out their wrongdoing, the wrongdoers, represented by the Ohio Attorney General, are able to summarily silence the ones who point out their wrongs without fear of any type of reprimand, all in the name of the vexatious litigator statute.

The vexatious litigator statute was enacted to ensure that litigators didn't harass or annoy others with unwarranted litigation. However, in the instant matter, an assistant attorney general was embarrassed at his defeat in a summary judgment matter. Instead of him respecting the Court's ruling in favor of this Appellant, he sought to have Appellant declared a vexatious litigator, with no lawful basis to do such. On the same day a trial was to begin, a trial was also scheduled in the court where the vexatious litigator charge was presented. Relying on the specific language that relates to disqualification of judges, that is, where it states for any reason that would otherwise cause a judge to be disqualified, Appellant attempted to get the judge in the vexatious litigation matter disqualified in this Honorable Court. Because Appellant turned to this Court for the correct answer, the vexatious litigation trial court retaliated against Appellant and used the fact that Appellant asked this Court for disqualification as one of the bases to declare Appellant a vexatious litigator. Retaliation for exercise of constitutional rights is repugnant to public policy in Ohio. Howbeit, the vexatious litigation trial Court failed to address <u>how</u> the matters presented constituted vexatious conduct. What this means to Ohioans and to other states that watch Ohio for guidance in judicial matters is that Ohio has a plan in place to summarily silence anyone whose litigation may expose the wrongdoing of those who work as State employees. What makes this case so bad is that the trial court <u>never had jurisdiction</u> to make the unlawful ruling it made.

Ohioans don't want courts of appeals that automatically take the side of the trial judge as what happened in Appellant's case. The court of appeals below looked at an emotional appeal by the attorney general's office opposed to looking at the law.

If this Court allows the court of appeals decision to stand, the notion of subject matter jurisdiction and personal jurisdiction become a joke grounded in an unlawful ultra vires supremacy, and that's why this Court must review this case on the merits to ensure propriety in Ohio's judicial system.

STATEMENT OF THE CASE AND FACTS

Appellant filed an action in the Court of Claims alleging, inter alia, defamation. The Assistant Attorney General assigned to the case had been successful in getting other defamation cases of other prisoners dismissed on summary judgment. Because he was unsuccessful against Appellant's lawsuit in various aspects, he opted to get Appellant declared a vexatious litigator in the Franklin County Common Pleas Court. However, Appellant was under the jurisdiction of the Ross County Court of Common Pleas since Plaintiff was confined in Ross County and not Franklin County.

Appellant tried to get the Franklin County judge disqualified for lack of subject matter jurisdiction, with the belief that the statute governing disqualification allowed him to seek disqualification in any matter that would otherwise disqualify a judge from hearing a case. Appellant believed lack of subject matter jurisdiction to be one of such instances. However, this Court in its April 12, 2010, judgment entry (Supreme Court Case No. 10-AP-031) held that the Franklin County judge could continue and that Appellant had "other legal remedies available to him to challenge the trial court's jurisdiction over the case."

Without giving full consideration on the merits, the trial court summarily declared Appellant a vexatious litigator. Resulting from this declaration, Appellant sought leave to proceed in the court of appeals, with the belief that the court of appeals would at least allow him to present facts per the avenues which this Court stated in its entry, Id. In every case where a person was declared a vexatious litigator by a trial court, he was at least able to brief the case on appeal to tell his side before the appeals' court made a ruling. Appellant was not given an opportunity which means that the avenues which this Court told Appellant he would have were foreclosed, and this means that Appellant has been denied, and is being denied, access to the courts, in violation of the Constitutions of the United States and the State of Ohio. Appellant now appeals to this Court.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law: A prisoner is denied his Constitutional right of access to the courts when courts that lack subject matter and personal jurisdiction over him have him declared a vexatious litigator without hearing his argument, after the Supreme Court of Ohio promises prisoner "avenues" to receive the justice to which he believes he is entitled.

As stated in Appellant's affidavit of disqualification presented to this Court, R.C. §2323.52(B) states that certain people "may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in...vexatious conduct...." (Emphasis added) Because Appellant had been a resident of Ross County since February 2007, it was Ross County and not Franklin County that had "jurisdiction over the person (Appellant). Ergo, Franklin County lacked jurisdiction per statute.

While clearly established federal and state law hold that a challenge to subject matter jurisdiction can be challenged at any time, and also that subject matter jurisdiction cannot be waived, the trial court did not have jurisdiction to declare Appellant a vexatious litigator, and according to this Court's judgment entry, the court of appeals was supposed to be at least one of the lawful avenues available to Appellant to challenge the matter of subject matter jurisdiction.

Should this Court decide to hear this matter, as Appellant prays it will, the Honorable Members of this Court will find that the trial court indeed lacked subject matter jurisdiction despite its flawed justification to the contrary. Also, this Court should find that when Appellant presented his application to proceed to the court of appeals, that court, with the realization that subject matter jurisdiction was an issue, should have allowed him to proceed as such allowance would not been contrary to what the vexatious litigation statute is about. Courts can't deny an application to proceed when there is no evidence of abuse of process and there are reasonable grounds for the proceedings. A appeal from a final appealable order is a reasonable ground to proceed and certainly is not an abuse of process, and because the application originated in the court of appeals based upon lack of subject matter jurisdiction, in part, and because subject matter jurisdiction may be challenged at any time according to federal and state law, this matter is rightfully before this Court as an appeal of right.

CONCLUSION

For the foregoing reasons, Appellant prays this Court will allow this case to be heard on the merits.

Respectfully submitted,

Norman V. Whiteside
Box 120-184313|Lebanon, Ohio 45036

CERTIFICATE OF SERVICE: A copy of the foregoing was mailed postage prepaid to Attorney General, Richard Cordray, 30 E. Broad St., Col's, Ohio 43215, on November 30, 2010.

Norman V. Whiteside

IN THE SUPREME COURT OF OHIO

RICHARD CORDRAY, OHIO ATTORNEY GENERAL, Plaintiff, vs. NORMAN V. WHITESIDE, Defendant.	Common Pleas Case No. 09-CV-04-005718 From the Franklin County Court of Common Pleas Supreme Court Case No. 10-AP-031 **Judgment Entry**

Norman V. Whiteside has filed an affidavit with the Clerk of this Court under R.C. 2701.03 seeking to disqualify Judge John F. Bender and all other Franklin County Common Pleas Court Judges from acting in any further proceedings in Case No. 09-CV-04-005718, a vexatious-litigator action now pending in the Court of Common Pleas of Franklin County.

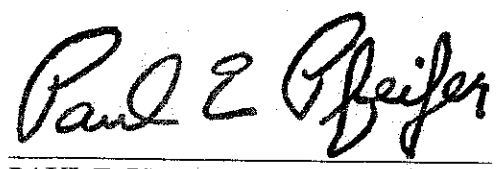
Whiteside alleges that Judge Bender should be disqualified because the Franklin County Common Pleas Court is without subject-matter and personal jurisdiction over the underlying action. Whiteside also asserts that the case against him includes cases that are not allowed to be considered for purposes of determining whether he is a vexatious litigator.

For the following reasons, I find no basis for ordering the disqualification of Judge Bender or any of the other common pleas judges. R.C. 2701.03(A) provides that a party or counsel may seek the disqualification of a judge if that judge "allegedly is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court." An affidavit of disqualification, however, is not the mechanism for determining whether a court of common pleas has jurisdiction over a case. See e.g., *In re Disqualification of Griffin*, 101 Ohio St.3d

119, 2003-Ohio-7356, ¶ 7-9 (an affidavit-of-disqualification proceeding is narrow in scope; it is not the proper mechanism for determining whether a judge has complied with the law). See also *In re Disqualification of Solovan*, 100 Ohio St.3d 1214, 2003-Ohio-5484, ¶ 4 (an affidavit of disqualification is not a vehicle to contest matters of substantive or procedural law). Whiteside has other legal remedies available to him to challenge the trial court's jurisdiction over his case, but an affidavit of disqualification is not the proper procedure for reviewing such matters. See *In re Disqualification of Russo*, 110 Ohio St.3d 1208, 2005-Ohio-7146, ¶ 6.

Accordingly, the affidavit of disqualification is denied. The case may proceed before Judge Bender.

Dated this 12th day of April, 2010.



PAUL E. PFEIFER
Acting Chief Justice

APPX 2

Whiteside

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Attorney General,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-517 (C.P.C. No. 09CVH04-5718)
Norman V. Whiteside,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

MEMORANDUM DECISION

Rendered on October 21, 2010

Richard Cordray, Attorney General, *Daniel R. Forsythe* and *Ashley D. Rutherford*, for appellee.

Norman V. Whiteside, pro se.

ON APPLICATION FOR LEAVE TO PROCEED

KLATT, J.

{¶1} Defendant-appellant, Norman V. Whiteside, has filed an application for leave to proceed pursuant to R.C. 2323.52(F)(2). Defendant seeks to appeal from the May 4, 2010 journal entry of the Franklin County Court of Common Pleas denying defendant's motions to dismiss and for summary judgment and granting summary judgment in favor of plaintiff-appellee, Ohio Attorney General Richard Cordray, and declaring defendant a vexatious litigator. For the reasons that follow, we deny defendant's application.

{¶2} The underlying action from which defendant seeks to appeal was initiated by the filing of the complaint by the attorney general asking the court to declare defendant a vexatious litigator. Defendant filed a motion for summary judgment. The attorney general filed a memorandum opposing defendant's motion and its own cross-motion for summary judgment. Defendant also filed a motion to dismiss for lack of subject-matter and/or personal jurisdiction.

{¶3} Having found that defendant was properly served by certified mail and that defendant had failed to challenge personal jurisdiction by motion or responsive pleading, the trial court found the defendant was prevented from doing so at that time. Further, finding that it had personal jurisdiction over defendant, the trial court also obtained jurisdiction over the subject matter and overruled defendant's motion to dismiss.

{¶4} In support of its motion for summary judgment, the attorney general established that defendant had "filed at least 15 defamation claims; all have failed as a matter of law either because the statement to which defendant objects is merely one that is not favorable to him but does not constitute defamation as the law defines the term, or because defendant has produced no evidence that the statement was false, or unprivileged, or injured him. Defendant has filed at least 9 property claims; all have failed as a matter of law for reasons including a lack of evidence that the property he claims the state lost (1) was ever in its custody, or (2) ever existed (the $3,000 jeweled gold ball point pen he claims he left in his cell), or (3) was not contraband."

{¶5} The court addressed a legal malpractice claim defendant had filed against the attorneys who had represented him at trial 18 years after the trial had ended. The court indicated defendant had never offered a practical or legally-substantiated reason for

waiting 18 years to file the lawsuit and concluded that taking "18 years to bring a lawsuit that ordinarily must be brought within one year or be forever barred, for no apparent reason, is neither an act of good faith nor one designed to seek justice."

{¶6} The court also referenced many motions defendant had filed over time and concluded that the majority had no foundation in the law. Ultimately, the court concluded that, considered as a whole, "the record shows defendant has habitually, persistently and without reasonable cause filed lawsuits and motions that are unwarranted under existing law and not supported by a good faith argument for its extension or reversal, or are interposed solely for delay."

{¶7} Vexatious conduct is defined in R.C. 2323.52(A)(2) to mean the 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.

{¶8} Vexatious litigator is defined in R.C. 2323.52(A)(3) 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.

{¶9} Pursuant to R.C. 2323.52(B), the attorney general may commence a civil action to have a person declared a vexatious litigator either while a vexatious conduct is occurring or within one year after the end of the civil action in which it occurred.

{¶10} A person who has been declared a vexatious litigator may be prohibited from (1) filing any legal proceedings in the court of claims or in any court of common pleas, any municipal court, or any county court, or (2) continuing any legal proceedings already pending in any of these courts, or (3) taking any action in any legal proceedings already pending in any of these courts, without first obtaining leave to proceed from the court that declared the litigator vexatious. See R.C. 2323.52(D)(1). Further, a vexatious litigator may not institute, continue, or take any other action in legal proceedings in a court of appeals without first obtaining leave from that court to proceed. See R.C. 2323.52(D)(3).

{¶11} Pursuant to R.C. 2323.52(F)(2), the court of appeals shall not grant a vexatious litigator leave to institute, or continue, or make an application in any legal proceedings in the court of appeals unless this court finds 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." Further, a decision denying leave to institute, or continue, or make an application in legal proceedings may not be appealed. See R.C. 2323.52(G).

{¶12} As above noted, defendant is attempting to appeal from the decision and entry of the Franklin County Court of Common Pleas granting summary judgment in favor of the attorney general and finding that defendant is a vexatious litigator. After considering the trial court's decision and the number of unsuccessful actions defendant

has filed as outlined in that decision, this court finds that defendant has failed to demonstrate that this application is not an abuse of process. Nor has defendant demonstrated reasonable grounds for granting his application.

{¶13} Finding that defendant has not satisfied the burden under R.C. 2323.52(F), this court denies defendant's application for leave to proceed.

Application for leave to proceed denied.

TYACK, P.J., and BROWN, J., concur.

IVX

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IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Ohio Attorney General,	:	
Plaintiff-Appellee,	:	
v.	:	No. 10AP-517 (C.P.C. No. 09CVH04-5718)
Norman V. Whiteside,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

JUDGMENT ENTRY

For the reasons stated in the memorandum decision of this court rendered herein on October 21, 2010, it is the order of this court that the application for leave to proceed is denied. Costs assessed against appellant.

KLATT, J., TYACK, P.J. & BROWN, J.

By: William A. Klatt
Judge William A. Klatt

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