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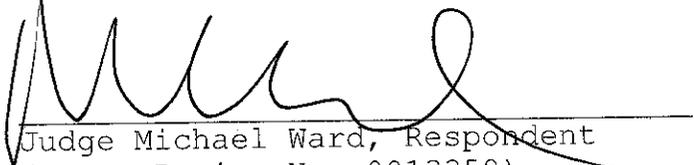
IN THE SUPREME COURT OF OHIO

Cinseree Johnson, : Case No. 10-2145
 Relator, : Original Action in Prohibition
 vs. : RESPONDENTS' AMENDED MOTION
 : TO DISMISS RELATOR'S
 The Court of Common Pleas : PROHIBITION ACTION
 of Athens County, Ohio, and :
 :
 The Honorable Michael Ward, :
 :
 Respondents. :

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 SUPREME COURT OF OHIO

Respondents move to dismiss relator's amended prohibition complaint, filed January 7, 2011. Respondents' memorandum in support is attached.

Respectfully submitted,


 Judge Michael Ward, Respondent
 (Atty. Regis. No. 0013358)
 Athens County Court of Common Pleas
 1 South Court Street
 Athens, Ohio 45701
 (740) 593-3591

FILED
 JAN 12 2011
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**RESPONDENTS' MEMORANDUM OF LAW SUPPORTING THEIR AMENDED MOTION
TO DISMISS RELATOR'S PROHIBITION ACTION**

I. INTRODUCTION

History repeats itself.

II. RELATOR'S FIRST TRY

In September 2008, respondent Ward declared relator a vexatious litigator pursuant to R.C. 2323.52. A copy of that judgment is on file with this Court. See <http://www.supremecourt.ohio.gov./Clerk/vexatious/>. In March 2009, relator filed a mandamus complaint in this Court seeking to compel respondent Ward to remove her vexatious litigator designation. See Johnson v. Ward, Supreme Court of Ohio Case No. 09-0444. (Docket attached as Exhibit A). Respondent countered with a timely motion to dismiss. Relator missed the ten-day deadline for responding to the motion to dismiss. Sup.Ct.Prac.R. 10(5). Seeking a means to prolong the action, relator filed an "amended" mandamus complaint. Respondent timely filed an amended motion to dismiss, and the Court unanimously granted the same, dismissing relator's amended mandamus complaint on the merits by entry of May 6, 2009.

III. THE DO-OVER

Undeterred, relator filed the instant action for prohibition relief on December 10, 2010. The goal and substance are the same as in Case No. 09-0444. Again, she wants this Court to compel respondent Ward to remove her vexatious litigator designation and/or to prevent respondent from "enforcing" the order. Again, respondents have countered with a timely motion to dismiss. Again, relator has missed the ten-day deadline for responding to the motion. Again, she has attempted to save her action by filing an "amended" complaint. As a purported "amendment", the new complaint is a sham. The Court is invited to compare the original and amended prohibition complaints. They are nearly identical. Relator has merely taken the original complaint, performed some minor and insignificant editing, and resubmitted it as an "amendment".

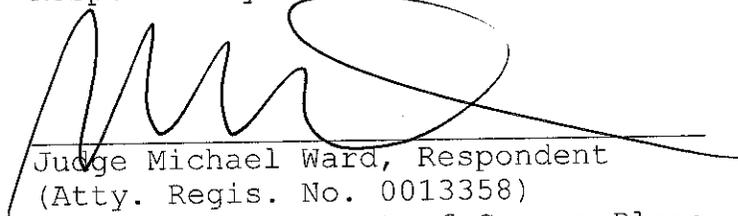
IV. CONCLUSION AND REQUEST FOR RELIEF

If so inclined, respondents could ask the Court to strike the amended complaint as a sham document. It appears likely that it was filed only to avoid the consequences of relator's failure to timely respond to respondents' December 23, 2010, motion to dismiss. Again, the "amendment" is no such thing. It is merely a resubmission of the original complaint with minor, insubstantial edits. However, respondents feel the simplest

method to counter the amendment is to renew their own December 23, 2010, motion to dismiss. The law and arguments advanced therein are fully applicable to the amended complaint and are sufficient to justify its speedy dismissal.

Accordingly, by this amended motion to dismiss, respondents hereby move to dismiss relator's January 7, 2011, amended prohibition complaint. As grounds, respondents reassert all the arguments and law discussed and cited in their December 23, 2010, motion to dismiss, a copy of which is attached as Exhibit B.

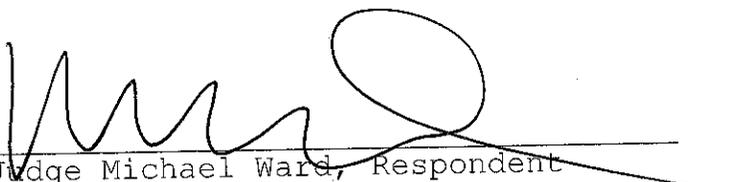
Respectfully submitted,

A handwritten signature in black ink, appearing to be 'M. Ward', written over a horizontal line.

Judge Michael Ward, Respondent
(Atty. Regis. No. 0013358)
Athens County Court of Common Pleas
1 South Court Street
Athens, Ohio 45701
(740) 593-3591

CERTIFICATE OF SERVICE

Pursuant to Sup.Ct.Prac.R. 8.5 and 14.2, the original and sixteen copies of the foregoing motion and memorandum have been mailed for filing with the Clerk of the Supreme Court of Ohio, and a copy of the same also has been served upon relator pro se, Cinseree Johnson, at the address noted in her complaint and upon the summons - namely, Cinseree Johnson, P.O. Box 5525, Athens, Ohio 45701, by ordinary U.S. Mail, all this 10th day of January, 2011.



Judge Michael Ward, Respondent
(Atty. Regis. No. 0013358)
Athens County Court of Common Pleas
1 South Court Street
Athens, Ohio 45701
(740) 593-3591

The Supreme Court of Ohio & The Ohio Judicial System

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Kristina D. Frost
Clerk of Court

Search Results: Case Number 2009-0444

The Supreme Court of Ohio

CASE INFORMATION

GENERAL INFORMATION

Case: 2009-0444 Original Action in Mandamus

Filed: 03/06/09

Status: Case Is Disposed

Cindy Johnson v. The Honorable Michael Ward

PARTIES and ATTORNEYS

Johnson, Cindy (Relator)
Ward, Michael Wayne (Respondent)

DOCKET ITEMS

- Most documents that were filed in Supreme Court cases after December 1, 2006, are scanned. They are available for viewing via the online dockets, generally within one business day from their date of filing.
- Supreme Court orders that were issued after January 1, 2007, are also available via the online docket as PDFs. Orders scanned prior to April 6, 2009, may not bear the signature of the Chief Justice. These online orders are identical to the original orders in all other respects.
- A  symbol in an online docket denotes a scanned filing or an electronic version of a Supreme Court order. Clicking the icon opens an image of the filing or order.

Date Filed	Description
03/06/09  View	Complaint in mandamus of Cindy Johnson <i>Filed by: Johnson, Cindy</i>
03/06/09	Affidavit of indigency <i>Filed by: Johnson, Cindy</i>
03/09/09  View	Summons & complaint issued to respondent(s)
03/09/09	Proof of mailing for The Honorable Michael Ward; postage \$6.07
03/11/09	Return receipt/service of summons & complaint; The Honorable Michael Ward served [no date]
03/26/09  View	Motion to dismiss <i>Filed by: Ward, Michael</i>
04/03/09  View	Notice of unavailability <i>Filed by: Johnson, Cindy</i>
04/09/09  View	First amended complaint in mandamus <i>Filed by: Johnson, Cindy</i>
04/14/09  View	Amended motion to dismiss relator's original and first amended complaint <i>Filed by: Ward, Michael</i>
 View	05/06/09: Granted; cause dismissed
04/17/09  View	Memo opposing motion to dismiss <i>Filed by: Johnson, Cindy</i>
04/21/09  View	Motion for stay <i>Filed by: Johnson, Cindy</i>
	05/06/09: Denied as moot
04/21/09	And motion for injunctive relief <i>Filed by: Johnson, Cindy</i>
	05/06/09: Denied as moot
05/01/09  View	Memo opposing motion for stay and motion for injunctive relief <i>Filed by: Ward, Michael</i>
05/06/09  View	Notice of service of amended complaint on respondent <i>Filed by: Johnson, Cindy</i>
05/11/09  View	Motion to vacate dismissal and reinstate case <i>Filed by: Johnson, Cindy</i>
 View	07/01/09: Denied
05/19/09  View	Memo opposing motion to vacate dismissal and reinstate case <i>Filed by: Ward, Michael</i>
05/22/09  View	Notice of filing <i>Filed by: Johnson, Cindy</i>
06/08/09	Affidavit of prejudice

 View	Filed by: Johnson, Cindy
06/11/09	Communication/correspondence received from Office of Chief Justice Moyer declining to recuse himself
04/28/10	Renewed motion to vacate dismissal and to reinstate the appeal
 View	Filed by: Johnson, Cindy
04/28/10	Request for hearing
 View	Filed by: Johnson, Cindy
05/07/10	Memo opposing renewed motion to vacate dismissal and to reinstate the case
 View	Filed by: Ward, Michael
05/13/10	Amended renewed motion to vacate dismissal and to reinstate the appeal
 View	Filed by: Johnson, Cindy
 View	06/09/10: Denied
05/14/10	Request for hearing
 View	Filed by: Johnson, Cindy
	06/09/10: Denied
06/21/10	Second renewed motion to vacate the dismissal and reinstate the case
 View	Filed by: Johnson, Cindy
 View	06/28/10: Denied
06/28/10	Proof of mailing to Cindy Johnson; postage \$5.54
06/28/10	Proof of mailing to Michael Wayne Ward; postage \$5.54
07/01/10	Return receipt received by Michael Wayne Ward; 06/30/10
07/08/10	Return receipt received by Cindy Johnson; 7/7/2010

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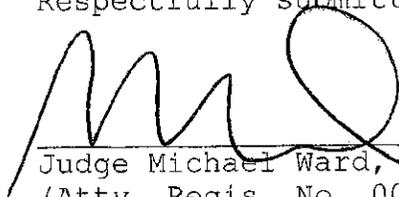
IN THE SUPREME COURT OF OHIO

Cinseree Johnson¹, : Case No. 10-2145
 Relator, : Original Action in Prohibition
 vs. : RESPONDENTS' MOTION TO DISMISS
 : RELATOR'S COMPLAINT FOR A WRIT
 The Court of Common Pleas : OF PROHIBITION
 of Athens County, Ohio, and :
 :
 The Honorable Michael Ward, :
 :
 Respondents. :

Pursuant to Sup.Ct.Prac.R. 10.5, and as more fully explained in the accompanying memorandum, respondents move to dismiss relator's prohibition complaint. Relator has failed to state a claim upon which relief can be granted.

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 SUPREME COURT OF OHIO

Respectfully submitted,



Judge Michael Ward, Respondent
 (Atty. Regis. No. 0013358)
 Athens County Court of Common Pleas
 1 South Court Street
 Athens, Ohio 45701
 (740) 593-3591

FILED
 DEC 23 2010
 CLERK OF COURT
 SUPREME COURT OF OHIO

¹ Cinseree Johnson also goes by the name "Cindy Johnson." See Johnson v. Ward, Supreme Court of Ohio Case No. 09-0444.

RESPONDENTS' MEMORANDUM OF LAW SUPPORTING DISMISSAL OF
RELATOR'S PROHIBITION COMPLAINT

I. Introduction.

In two civil actions filed in 2008, respondent Michael Ward, a judge of the respondent Athens County Court of Common Pleas, entered a final appealable judgment declaring, inter alia, relator to be a vexatious litigator. Relator directly appealed the judgment to the Fourth Appellate District Court of Appeals, but later voluntarily dismissed her appeal. The Court of Appeals allowed relator to move for reinstatement of her appeal, but her motion was ultimately denied. Relator also moved respondent to vacate the judgment, but the motion was denied. In March 2009, relator filed a mandamus complaint with the Supreme Court of Ohio seeking an order forcing respondent to remove her vexatious litigator designation. See Johnson v. Ward, Supreme Court of Ohio Case No. 2009-0444. On May 6, 2009, the Supreme Court issued a unanimous merits decision granting respondent's motion to dismiss the mandamus complaint. 121 Ohio St.3d 1470, 2009-Ohio-2045.

On December 10, 2010, relator filed the instant prohibition complaint. Relator has merely repackaged her dismissed mandamus complaint as one in prohibition. Her allegations and arguments

are not new. Rather, she has simply changed her request for relief from "make the judge vacate or remove my vexatious litigator designation" (mandamus) to "prohibit the judge from enforcing the vexatious litigator designation" (prohibition). Relator's prohibition complaint suffers the same defects as her dismissed mandamus action, and merits a similar fate.

II. Civ.R. 12(B)(6).

Respondent offers this motion pursuant to Civ.R. 12(B)(6), explained in State ex rel. Turner v. Houk, 112 Ohio St.3d 561, Parag. 5, 862 N.E.2d 104, 2007-Ohio-814.

Dismissal under Civ.R. 12(B)(6) for failure to state a claim upon which relief can be granted is appropriate if, after all factual allegations are presumed true and all reasonable inferences are made in [relator's] favor, it appears beyond doubt that [she] could prove no set of facts warranting the requested extraordinary relief in mandamus.

Civ.R. 12(B)(6) motions are judged on the face of the complaint alone. State ex rel. Hanson v. Guernsey Cty. Bd. of Commrs., 65 Ohio St.3d 545, 548, 605 N.E.2d 378, 1992-Ohio-73. Unsupported conclusions are not deemed admitted under Civ.R. 12(B)(6).

Rather, to withstand dismissal, relator must allege facts which, taken as true, establish her claim. See Mitchell v. Lawson Milk Co. (1988), 40 Ohio St.3d 190, 192-193, 532 N.E.2d 753.

III. Relator's Allegations.

Ohio notice pleading requires only a short, plain statement

of the claim. Vandiver v. Morgan Adhesive Co. (1998), 126 Ohio App.3d 634, 642, 710 N.E.2d 1219. Relator's narrative factual statements in her complaint clearly exceed this requirement. However, the gist of her complaint appears as follows. Relator was a plaintiff in two 2008 civil proceedings over which respondent presided. Defendants answered and counterclaimed against plaintiff (relator). Eventually, respondent entered final judgment that, inter alia, declared relator a vexatious litigator. Relator alleges several problems with this ruling, including due process and equal protection violations, and, generously construing her allegations, a lack of subject matter jurisdiction. Relator's main theme is best represented by the following quote from her complaint:

Simply, the complaint to declare Relator a vexatious litigator failed to conform to the rules which govern the manner in which such an action may be commenced. The action was not commenced by a party of standing; nor had Relator ever been before this or any other state court habitually; nor was Relator ever in litigation with the named or intended parties in any court.

Relator's Dec. 10, 2010, Prohibition Complaint, p. 7.

IV. Elements Of Prohibition.

A writ of prohibition is appropriate only where (1) the respondent is about to exercise judicial authority, (2) the respondent lacks authority to do so, and (3) if the writ is denied, relator will suffer injury for which there is no plain and adequate remedy in the ordinary course of law. State ex

rel. Keenan v. Calabrese (1994), 69 Ohio St.3d 176, 178, 631 N.E.2d 119.

V. Respondent Is Not About To Exercise Judicial Authority.

Respondent is not about to exercise judicial authority affecting relator. Relator's complaint reveals that respondent long ago entered the subject vexatious litigator judgment in question. Generally, once the act sought to be prohibited has been completed, prohibition will not issue. Gatto v. Falvey, Stark App. No. 2009CA0184, 2009-Ohio-4996, Parag. 2.

V. Respondent Did Not Lack Authority.

There is an exception to the foregoing rule. The Supreme Court of Ohio has held that

"where an inferior court patently and unambiguously lacks jurisdiction over the cause, prohibition will lie both to prevent the future unauthorized exercise of jurisdiction and to correct the results of previous jurisdictionally unauthorized actions.'" (Emphasis sic.)

State ex rel. Goldberg v. Mahoning Cty. Probate Court, 93 Ohio St.3d 160, 162, 753 N.E.2d 192, 2001-Ohio-1297, quoting State ex rel Rogers v. McGee Brown (1997), 80 Ohio St.3d 408, 410, 686 N.E.2d 1126, 1127, quoting State ex rel. Litty v. Leskovyansky (1996), 77 Ohio St.3d 97, 98, 671 N.E.2d 236, 238. However, as respondent thoroughly and successfully explained in Johnson v.

Ward, Supreme Court of Ohio Case No. 2009-0444, respondent did not patently and unambiguously lack jurisdiction to enter the subject vexatious litigator judgment.

Mandamus and prohibition will issue to correct and prevent judicial actions undertaken with patent and unambiguous lack of jurisdiction, irrespective of the availability of an adequate remedy at law. State ex rel. Sapp v. Franklin Cty. Court of Appeals, 118 Ohio St.3d 368, 370, Parag. 15, 889 N.E.2d 500, 2008-Ohio-2637. However,

[a]bsent a patent and unambiguous lack of jurisdiction, a tribunal having general subject matter jurisdiction of a case possesses authority to determine its own jurisdiction, and a party challenging its jurisdiction has an adequate remedy by postjudgment appeal from its holding that it has the requisite jurisdiction.

State ex rel. Rootstown Local School Dist. Bd. of Edn. v. Portage County Court of Common Pleas (1997), 78 Ohio St.3d 489, 491, 678 N.E.2d 1365. Relator has set forth no facts indicating respondent patently and unambiguously lacked jurisdiction to adjudicate the two civil actions she herself filed in 2008 or her opponents' R.C. 2323.52-based counterclaims. Rather, common pleas courts clearly have subject matter jurisdiction under the vexatious litigator statute. See, e.g., R.C. 2323.52(B); and Castrataro v. Urban, 115 Ohio App.3d 597, 802 N.E.2d 689, 2003-Ohio-6953.

Relator might not understand the distinction between a court's lack of subject matter jurisdiction and a court's error

in the exercise of its jurisdiction. See State ex rel. Mosier v. Fornof, 126 Ohio St.3d 47, 930 N.E.2d 305, 2010-Ohio-2516. Even presumed true, none of relator's allegations support a conclusion of patent and unambiguous lack of jurisdiction. At best, relator alleges error in respondent's exercise of general jurisdiction over her vexatious litigator proceeding.

For example, relator alleges the defendants in the underlying cases lacked standing to pursue a vexatious litigator ruling. However, with the exception of administrative appeals, standing normally refers only to a party's capacity to bring suit, not the court's subject matter jurisdiction. LeMarin Condominium Unit Owners Assoc., Inc. v. Board of Revision of Ottawa Cty., 176 Ohio App.3d 342, 344, Parag. 8, 891 N.E.2d 1252, 2008-Ohio-2379, citing State ex rel. Jones v. Suster (1998), 84 Ohio St.3d 70, 77, 701 N.E.2d 1002.

Relator claims her status as a resident of Cuyahoga County precluded the disputed judgment. But vexatious litigator proceedings may be commenced "in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct." R.C. 2323.52(B). Clearly, regardless of her county of residence, by filing the underlying 2008 civil actions in Athens County Common Pleas Court, relator (as plaintiff therein) invoked, and submitted her person to, respondent's jurisdiction.

Relator also alleges she has not engaged in "habitually" vexatious conduct within the meaning of R.C. 2323.52. But, having possessed subject matter jurisdiction over the vexatious litigator proceeding, respondent clearly had authority to enter factual and legal conclusions regarding the meaning and application of relevant statutory terminology.

Because none of the issues identified in relator's prohibition complaint imply patent and unambiguous lack of jurisdiction, the third element of prohibition, i.e., the availability of an adequate remedy at law, must be considered.

VI. Adequate Remedy At Law.

In the absence of facts establishing a patent and unambiguous lack of jurisdiction, neither prohibition nor mandamus will issue where a relator possesses an adequate remedy in the ordinary course of law. State ex rel. Ahmed v. Costine, 103 Ohio St.3d 166, Parag. 4, 814 N.E.2d 865, 2004-Ohio-4756. Relator has failed to allege facts showing she lacks adequate legal remedies.

As for alleged procedural errors, their merits cannot be contested herein because relator had an adequate remedy through a direct appeal of respondent's final judgment. See State ex rel. Amon v. Bernard, 180 Ohio App.3d 707, Parag. 22, 906 N.E.2d 1208, 2009-Ohio-405. Thus, procedural errors attending a trial

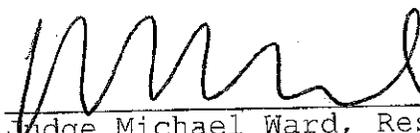
court's vexatious litigator judgment are appealable to the appropriate district of the Ohio Court of Appeals, as long as leave to appeal is sought and obtained from the appellate court. See State ex rel. Sapp, 118 Ohio St.3d 368. Relator's complaint reveals that she did, in fact, successfully initiate a direct appeal of respondent's vexatious litigator judgment to the Fourth Appellate District Court of Appeals, but then voluntarily dismissed her appeal. Relator was permitted to move for reinstatement of her appeal, but the Court of Appeals ultimately declined to reinstate the appeal. Relator also moved to vacate the vexatious litigator judgment after obtaining respondent's leave to so move. A judgment overruling a motion to vacate judgment is itself a final appealable order, see Colley v. Bazell (1980), 64 Ohio St.2d 243, 416 N.E.2d 605, allowing relator another means to pursue a remedy. See State ex rel. Ahmed, 103 Ohio St.3d 166, at Parag. 5 (Availability of motion for relief from judgment constituted adequate remedy at law).

VII. Conclusion.

Relator has alleged no facts that would establish her right to a writ of prohibition compelling respondent to remove her vexatious litigator designation or precluding respondent from enforcing the same. Her complaint, construed in accordance with Civ.R. 12(B)(6), fails to demonstrate (1) that respondent is

about to exercise judicial authority within the meaning of prohibition law, (2) that respondent patently and unambiguously lacked subject matter jurisdiction to enter the disputed 2008 judgment, and (3) that relator lacks or lacked plain and adequate remedies in the ordinary course of the law. Accordingly, the complaint should be dismissed pursuant to Civ.R. 12(B)(6).

Respectfully submitted,



Judge Michael Ward, Respondent
(Atty. Regis. No. 0013358)
Athens County Court of Common Pleas
1 South Court Street
Athens, Ohio 45701
(740) 593-3591

CERTIFICATE OF SERVICE

Pursuant to Sup.Ct.Prac.R. 8.5 and 14.2, the original and sixteen copies of the foregoing motion and memorandum have been mailed for filing with the Clerk of the Supreme Court of Ohio, and a copy of the same also has been served upon relator pro se, Cinseree Johnson, at the address noted in her complaint and upon the summons - namely, Cinseree Johnson, P.O. Box 5525, Athens, Ohio 45701, by ordinary U.S. Mail, all this 21st day of December, 2010.



Judge Michael Ward, Respondent
(Atty. Regis. No. 0013358)
Athens County Court of Common Pleas
1 South Court Street
Athens, Ohio 45701
(740) 593-3591