

IN THE SUPREME COURT OF OHIO

STATE OF OHIO ex rel. JOSEPH McGRATH,

APPELLANT,

-vs-

JUDGE ROBERT McCLELLAND, ET AL,

APPELLEES.

Case No. 2012-0737

On Appeal from the
Cuyahoga County Court
of Appeals, Eighth
Appellate District

MERIT BRIEF OF APPELLEES
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MEMORANDUM IN SUPPORT

I. PROCEDURAL HISTORY OF THE CASE

On March 31, 2000, appellant Joseph McGrath was found guilty by a jury in Cuyahoga County Court of Common Pleas case number CR-00-388833 of one count of retaliation in violation of R.C. 2921.05 (Count 1), one count of aggravated trespass in violation of R.C. 2911.21 (Count 2), two counts of breaking and entering in violation of R.C. 2911.13 (Count 3 and 4), one count of falsification in violation of R.C. 2921.13 (Count 6), and one count of menacing by stalking in violation of R.C. 2903.211 (Count 7). McGrath was previously acquitted of one count of breaking and entering (count 5) on March 30, 2000.

On April 11, 2000, McGrath was sentenced to two years on Count 1, and six months on each of Counts 2, 3, 4, 6, and 7. The trial court ordered Counts 2, 6, and 7 to run concurrently to each other and concurrently with the sentences imposed in Counts 1, 3, and 4. The trial court also ordered counts 1, 3 and 4 to run consecutively to each other for a total sentence of three years in prison and six months in jail.

McGrath's convictions were affirmed on appeal. *State v. McGrath*, 8th Dist. No., 8th Dist. No. 77896, 2001 WL 1167152 (Sept. 6, 2001), appeal not allowed by *State v. McGrath*, 94 Ohio St.3d 1432, 2002-Ohio-5651. McGrath filed an application for reopening that was denied by the Eighth District Court of Appeals on May 16, 2002. *State v. McGrath*, 8th Dist. No. 77896, 2002-Ohio-2386, appeal not accepted for review by *State v. McGrath*, 96 Ohio St.3d 1488, 2002-Ohio-4478.

On July 25, 2002, the trial court issued a journal entry correcting parts of the original sentencing journal entry issued by the court on May 29, 2002 pursuant to Crim.R. 36. In the corrected sentencing journal entry issued by the trial court on July 25, 2002, the court sentenced

McGrath to two years on Count 1, and six months as to Counts 3 and 4, and to a jail term of six months as to Counts 2, 6, and 7 to run concurrently with each other and concurrently to the sentences imposed in Counts 1, 3 and 4. The trial court also ordered the sentences in counts Counts 1, 3, and 4 to run consecutively with each other for a total sentence of three years in prison and six months in jail. The sentencing entry issued by the trial court on July 25, 2002 simply corrected the counts for which McGrath was to serve his time in jail as opposed to prison.

On August 26, 2011, McGrath filed a complaint for writ of mandamus and/or prohibition (“Complaint III”) asking the Eighth District Court of Appeals: (1) to compel appellee Judge McClelland to vacate McGrath’s judgment of conviction and dismiss his underlying criminal case with prejudice on the basis that the trial court failed to properly impose postrelease control; (2) to compel appellee Judge McClelland to issue a final appealable order that complies with Crim.R. 32(C); and (3) to compel appellee Cuyahoga County Clerk of Courts Gerald Fuerst to return any and all alleged unlawfully garnished assets and to prohibit the Clerk of Courts from any further garnishment of assets.

On September 20, 2011, appellees Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst filed a motion for summary judgment to McGrath’s Complaint III. On October 4, 2011, McGrath filed a motion for summary judgment and/or motion to strike, and a brief in opposition to Appellees’ motion for summary judgment to McGrath’s Complaint III.

On January 13, 2012, the Eighth District Court granted Appellees motion for summary to McGrath’s Complaint III, denied McGrath’s Complaint III, denied McGrath’s motion for summary judgment and/or motion to strike Appellees’ motion for summary judgment, and found McGrath to be a vexatious litigator. *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157.

McGrath has appealed the Eighth District Court's judgment denying his complaint for writ of mandamus and/or prohibition that is before this Court as a matter of right.

II. LAW AND ARGUMENT

Proposition of Law No. I:

When an Ohio Supreme Court Instructs the Lower Courts to Correct Sentencing Entries That Are Not in Compliance With Crim.R. 32(C), That's Exactly What the Lower Courts are Required to Do and When a Lower Court Fails to Issue a Corrected Entry an Extraordinary Writ Will Issue and the Doctrine of Res Judicata and/or Law of the Case Has No Application

In his first proposition of law McGrath contends that the Eighth District Court erred when it denied McGrath's claim that when the trial court issued its sentencing journal entry on July 25, 2002, in which the trial court corrected a clerical error in the original sentencing journal entry issued by the trial court on May 29, 2002, the entry of July 25, 2002 "cancelled out" the original sentencing entry of May 29, 2002. (McGrath's Complaint III at ¶ 9).

The Eighth District Court properly determined that McGrath's claim that the sentencing journal entry issued by the trial court on July 25, 2002 rendered the trial court's original sentencing journal entry of May 29, 2002 void is barred by res judicata. *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157, ¶¶ 3-4.

The Eighth District Court found that in a complaint for writ of mandamus and/or prohibition previously filed by McGrath in this Court he had claimed that the sentence in case number CR-00-388833 was void. *Id.* The Eighth District Court determined that in this prior case filed by McGrath this Court had granted respondents' motion to dismiss McGrath's complaint for writ of mandamus and/or prohibition. *Id.*

As a result, the Eighth District Court properly held, McGrath's claim in the instant case that that the sentencing journal entry issued by the trial court on July 25, 2002 rendered the trial court's original sentencing journal entry of May 29, 2002 void is barred by res judicata. *Id.*

Moreover, McGrath's claim that the sentencing journal entry issued by the trial court on July 25, 2002 is a "replacement entry" for the trial court's original sentencing journal entry of May 29, 2002 is without merit. Under Crim. R. 36 a court at any time may correct mistakes in judgments, orders, or other parts of the record arising from oversight or omission. The sentencing entry issued by the trial court on July 25, 2002 simply corrected the counts for which McGrath was to serve time in jail as opposed to prison. (See Appellees' motion for summary judgment filed on September 20, 2011 in underlying case, Exhibits C and D). There is no language in Crim. R. 36 that indicates or even suggests that the issuance of a journal entry to correct a clerical error voids the original entry.

McGrath relies upon *State ex rel. Elkins v. Sandusky Cty. Court of Common Pleas*, 6th Dist. No. S-11-008, 2011-Ohio-1904, in support of his claim that a nunc pro tunc entry "replaces" the original sentencing entry. (McGrath's brief at p. 12). But *Elkins* is distinguishable from the instant case.

In *Elkins* the trial court's original sentencing journal entry failed to dispose of firearm specifications pertaining to Counts 1, 2, and 3 in the indictment. *Id.* at ¶ 1. The trial court in *Elkins* subsequently issued a nunc pro tunc entry in an attempt to correct the prior sentencing journal entry. *Id.* at ¶ 2.

The court in *Elkins* held that although the respondent acknowledged that the initial entry was incorrect, the subsequent entry still did not comply with Crim.R. 32(C) since it did not replace the original with a complete, corrected judgment. *Id.* at ¶ 6. Consequently, the court in *Elkins*, relying on *State v. Baker*, 119 Ohio St.3d 197, 2008-Ohio-3330, held that because the judgment and conviction is divided between two entries rather than a single document, the trial court violated Crim.R. 32(C). *Id.* at ¶¶ 5-6.

In the case before this Court, unlike *Elkins*, there was no need for the trial court to issue a corrected journal entry that complies with Crim.R. 32(C) since the original sentencing journal entry complied with Crim.R. 32(C). McGrath's claim that the sentencing journal entry issued by the trial court in the instant case on July 25, 2002 is a "replacement entry" for the trial court's original sentencing journal entry of May 29, 2002 is factually inaccurate. The trial court in the instant case did not intend for the corrected journal entry issued on July 25, 2002 to "replace" the original sentencing journal entry of May 29, 2002 in its entirety.

In *Baker, supra*, this Court held that a judgment of conviction is a final appealable order under R.C. 2505.02 when it sets forth (1) the guilty plea, the jury verdict, or the finding of the court upon which the conviction is based; (2) the sentence; (3) the signature of the judge; and (4) entry on the journal by the clerk of court. *Id.* at ¶ 9.

A review of the original sentencing journal entry issued by the trial court on May 29, 2002 reflects that: (1) McGrath was found guilty by a jury of various offenses; (2) McGrath was sentenced for all offenses for which he was found guilty; (3) the entry was signed by the trial judge; and (4) the entry contains a time stamp by the Clerk of Courts. (See Appellees' motion for summary judgment filed on September 20, 2011 in underlying case, Ex. C). As a result, the original sentencing journal entry issued by the trial court on May 29, 2002, in case number CR-00-388833 is a final appealable order under R.C. 2505.02 and Crim.R. 32(C).

Therefore, the trial court was not required to issue a corrected journal entry that complied with Crim.R. 32(C). There is no language in Crim. R. 36 that requires that a journal entry that corrects a clerical error must restate the entire language of the document that was corrected. Under McGrath's reasoning, a trial court would be unable to issue a corrected journal entry for the sole purpose of correcting a minor misspelling of a word in an original journal entry without

including the contents of the entire written document in which the misspelling existed. There is no such requirement under Ohio law.

Therefore, for the foregoing reasons Appellees respectfully request that McGrath's first proposition of law be denied.

Proposition of Law No. II:

When There Are No Provisions in Commitment, Sentencing Journal Entry For the Payment of Court Costs By Any Party Any Attempt in Garnishment By the Clerk of Court For the Collections Thereof is Void and an Extraordinary Writ Will Issue Against the Clerk Prohibiting Such

In his second proposition of law McGrath claims that the Eighth District Court erred when it denied McGrath's claim that the Cuyahoga County Clerk of Courts was unauthorized to collect court costs in case number CR-00-388833. McGrath contends that he is not challenging "the issue of court costs", and that res judicata does not preclude him from raising his claim that the Cuyahoga County Clerk of Courts was unauthorized to collect court costs.

However, contrary to McGrath's contention that he is not challenging "the issue of court costs", he is challenging the authority of the trial court's order of court costs and the Cuyahoga County Clerk of Courts' collection of court costs in case number CR-00-388833. The Eighth District Court correctly held that claims associated with the imposition and the collection of court costs may not be addressed by way of extraordinary writ. *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157, ¶ 5.

This Court has held that relators do not have a remedy by way of extraordinary writ to raise claims concerning the trial court's imposition and collection of court costs since they have an adequate remedy to raise these claims by direct appeal. *State ex rel. Whittenberger v. Clarke*, 89 Ohio St.3d 207, 2000-Ohio-136 (court affirmed denial of petition for writ of mandamus since relator had an adequate remedy by appeal to challenge the trial court's imposition of court costs);

State ex rel. Recker v. Putnam Cty. Clerk of Courts, 87 Ohio St.3d 235, 236, 1999-Ohio-37 (court affirmed denial of writ of prohibition, in which relator claimed the clerk of courts and the county prosecuting attorney should be prohibited from collecting court costs, since relator had an adequate remedy by appealing the trial court's costs order).

McGrath also maintains that the Eighth District Court erred when it held that res judicata precludes him from raising his claim that the Cuyahoga County Clerk of Courts was unauthorized to collect court costs. However, the Eighth District Court correctly held that McGrath had previously challenged the authority of the Cuyahoga County Clerk of Courts to collect court costs in case number CR-00-388833 in *State ex rel. McGrath v. Gallagher*, 127 Ohio St.3d 1483, 2010-Ohio-6371.¹ *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157, ¶¶ 3-4.

Res judicata bars the litigation of all claims that either were or might have been litigated in a first lawsuit. *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, at ¶ 9; *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, at ¶ 14. Because McGrath's claim that the Cuyahoga County Clerk of Courts was unauthorized to collect court costs in case number CR-00-388833 has already been litigated by this Court in *State ex rel. McGrath v. Gallagher*, 127 Ohio St.3d 1483, 2010-Ohio-6371, the Eighth District Court correctly held that this claim is barred by res judicata.

Therefore, for the foregoing reasons Appellees respectfully request that McGrath's second proposition of law be denied.

¹ See McGrath's complaint for writ of mandamus and/or prohibition filed in *State ex rel. McGrath v. Gallagher*, 127 Ohio St.3d 1483, 2010-Ohio-6371, attached to Respondents' motion for summary judgment filed in the underlying case on September 20, 2011, Ex. E, ¶¶ 13-16.

Proposition of Law No. III.

When a Sentencing Journal Entry Fails to Impose Any Post Release Control and/or Appropriate Term of Post Release Control, That Offending Portion of the Sentence is Void and Open to Collateral Attack At Any Time By Any Person and the Term Collateral Attack Includes Mandamus, Procedendo, Habeas Corpus, Post Conviction Relief, Delayed Appeal, Appeal, Oral and/or Written Motion to the Court to Compel Compliance and the Doctrine of Res Judicata and/or Law of the Case Do Not Apply

In his third proposition of law McGrath claims that the Eighth District Court erred when it denied his claim that his sentence in case number CR-00-388833 is defective due to the trial court's improper imposition of postrelease control. However, the Eighth District Court correctly determined that McGrath's claim that the trial court improperly imposed postrelease control is barred by res judicata. *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157, ¶¶ 2-4.

On October 23, 2009 McGrath filed a Complaint For Writ Of Mandamus ("Complaint I") against Judge Eileen A. Gallagher² asking the Eighth District Court to void McGrath's sentence in Cuyahoga County Court of Common Pleas case number CR-00-388833 based upon the improper imposition of postrelease control. *State ex rel. McGrath v. Matia, et al.* Cuyahoga App. No. 94147, 2010-Ohio-1987, ¶¶ 5-7. On April 30, 2010, the Eighth District Court granted Judge Gallagher's motion to dismiss and denied Relator's Complaint I. *Id.* On September 1, 2010, McGrath filed a notice of appeal of the Eighth District Court's denial of his Complaint I with this Court, but after briefing by the parties McGrath filed an application for dismissal of the appeal that was subsequently granted by this Court.³

² Appellee Judge McClelland is the successor to Judge Eileen A. Gallagher.

³ *State ex rel. McGrath v. Honorable Judge David Matia*, Supreme Court of Ohio case number 2010-1539.

On October 25, 2010, Relator filed another Complaint For Writ Of Mandamus And/Or Prohibition (“Complaint II”) in this Court against Judge Eileen A. Gallagher, the Cuyahoga County Clerk of Courts, and the Eighth District Court of Appeals claiming that because postrelease control was improperly imposed at the time of his sentence in case number CR-00-388833, his conviction should be vacated and the Cuyahoga County Clerk of Courts should be ordered to return any and all garnished assets and should be enjoined from any continuing garnishment of assets.⁴ On December 29, 2010, this Court granted Respondents’ motion to dismiss McGrath’s Complaint II. *State ex rel. McGrath v. Gallagher*, 127 Ohio St. 3d 1483, 2010-Ohio-6371.

In his claim currently pending before this Court McGrath seeks, for the third time, to have a court vacate his judgment of conviction in case number CR-00-388833 for the failure of the trial court to properly impose postrelease control. But McGrath’s claim is barred by res judicata. Res judicata bars the litigation of all claims that either were or might have been litigated in a first lawsuit. *State ex rel. Sneed v. Anderson*, 114 Ohio St.3d 11, 2007-Ohio-2454, at ¶ 9; *State ex rel. Mora v. Wilkinson*, 105 Ohio St.3d 272, at ¶ 14.

Because Relator’s claim concerning the improper imposition of postrelease control in case number CR-00-388833 has already been litigated by the Eighth District Court in *State ex rel. McGrath v. Matia*, Cuyahoga App. No. 94147, 2010-Ohio-1987 and by this Court in *State ex rel. McGrath v. Gallagher*, 127 Ohio St. 3d 1483, 2010-Ohio-637, the Eighth District Court correctly held that McGrath’s claim in the instant case that the trial court failed to properly impose postrelease control in case number CR-00-388833 is barred by res judicata.

⁴ See McGrath’s complaint for writ of mandamus and/or prohibition filed in *State ex rel. McGrath v. Gallagher*, 127 Ohio St.3d 1483, 2010-Ohio-6371, attached to Respondents’ motion for summary judgment filed in the underlying case on September 20, 2011, Ex. E, ¶¶ 7-12.

Therefore, for the foregoing reasons Appellees respectfully request that McGrath's third proposition of law be denied.

Proposition of Law No. IV.

The Eighth District Court of Appeals was Without Jurisdiction to Declare the Relator a Vexatious Litigator, Pursuant to Local R. 23(B), As the Local Rule is in Conflict With R.C. 2323.52(B), the Ohio and United States Constitutions and is Invalid

In his fourth proposition of law McGrath claims that the Eighth District Court erred when it declared him to be a vexatious litigator. McGrath maintains that Loc.App.R. 23(B) of the Eighth District Court of Appeals is invalid because it is in conflict with R.C. 2323.52. McGrath's claim is without merit.

A person may be declared a vexatious litigator under Loc.App.R. 23(B) in the following circumstances:

(A) If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A) of this rule, the Eighth District Court of Appeals may, sua sponte or on motion by a party, find the party to be a vexatious litigator. If the Eighth District Court of Appeals determines that a party is a vexatious litigator under this rule, the Court may impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Eighth District Court of Appeals without first obtaining leave, prohibiting the filing of actions in the Eighth District Court of Appeals without the filing fee or security for costs required by Loc.App.R. 3(A), or any other restriction the Eighth District Court of Appeals considers just.

(B) If the Eighth District Court of Appeals, sua sponte or on motion by a party, determines that an appeal, original action, or motion is frivolous or is prosecuted for delay, harassment, or any other improper purpose, it may impose on the person who signed the appeal, original action, or motion, a represented party, or both, appropriate sanctions. The sanctions may include an award to the opposing party of reasonable expenses, reasonable attorney fees, costs or double costs, or any other sanction the Eighth District Court of Appeals considers just. An appeal or original action shall be considered frivolous if it is not reasonably well-grounded in fact, or warranted by existing law, or by a good faith argument for the extension, modification, or reversal of existing law.

Similarly, under R.C. 2323.52(B) an individual who believes he has defended against habitual and persistent vexatious conduct may commence a civil action in a court of common pleas to have that person declared a vexatious litigator. If a person is found to be a vexatious litigator the common pleas court may enter an order prohibiting the vexatious litigator from instituting legal proceedings in a court of common pleas, municipal court, or county court without first obtaining leave of that court to proceed. R.C. 2323.52(D)(1).

McGrath claims that a conflict exists between Loc.App.R. 23(B) and R.C. 2323.52 due to the fact that R.C. 2323.52 requires that a party who believes he is defending against habitual and persistent vexatious conduct must commence a civil action in a court of common pleas while under Loc.App.R. 23(B) the Eighth District Court of Appeals may find a party to be a vexatious litigator sua sponte or on a motion by a party.

However, the fact that R.C. 2323.52 allows a party who believes he is defending against habitual and persistent vexatious conduct to commence a civil action in a court of common pleas does not conflict with the Eighth District Court's ability to declare a party a vexatious litigator sua sponte or upon motion by a party. Loc.App.R. 23(B) and R.C. 2323.52 merely provide two alternative procedural methods by which a party who believes he is defending against habitual and persistent vexatious conduct can seek protection depending upon which court the vexatious litigation is occurring.

Under R.C. 2323.52(D)(1) a court of common pleas can prohibit a person found to be a vexatious litigator from instituting legal proceedings in a court of common pleas, municipal court, or county court without first obtaining leave of that court to proceed. Consequently, a court of common pleas could not prohibit a person found to be a vexatious litigator from instituting legal proceedings in a court of appeals under R.C. 2323.52(D)(1). Loc.App.R. 23(B),

on the other hand, provides the Eighth District Court with the authority to prohibit a person found to be a vexatious litigator from instituting legal proceedings in the Eighth District Court of Appeals. Consequently, there is no conflict between Loc.App.R. 23(B) and R.C. 2323.52.

In addition, under the Ohio Constitution, Article IV, Section B, courts may adopt local rules concerning local practice in their respective courts which are not inconsistent with the rules promulgated by the this Court. Similarly, under Sup.R. 5(A)(1) a court may adopt any local rule of practice that promotes the use of any device or procedure to facilitate the expeditious disposition of cases that is not inconsistent with rules promulgated by this Court.

This Court in *Mayer v. Bristow*, 91 Ohio St.3d 3, 2000-Ohio-109 recognized that abuse by persons who file frivolous lawsuits clog the court dockets and prevents the speedy consideration of proper litigation:

The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources—resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.

Id. at p. 13, citing *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50.

This Court in *Mayer* explained that such conduct also undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow on the administration of justice. *Id.* As a result, the Eighth District Court had the authority, pursuant to the Ohio Constitution, Article IV, Section B and to Sup.R. 5(A)(1) to establish a procedure to preclude frivolous litigation.

McGrath, relying upon *Kinstle v. Union Cty. Sheriff's Office, et al.*, 3rd Dist. No. 14-07-16, 2007-Ohio-6024, also claims that there is no authority in the Ohio Civil Rules or the Ohio

Revised Code for the Eighth District Court to declare a person a vexatious litigator upon oral motion when ruling on the merits of a pending motion for summary judgment. However, *Kinstle* is distinguishable from the instant case.

In *Kinstle* the defendant in a civil action filed a motion for summary judgment, and a motion requesting that the court sanction the plaintiff pursuant to Civ.R 11 and declare the plaintiff a vexatious litigator pursuant to R.C. 2323.52. *Id.* at ¶ 3. The Court in *Kinstle* found that R.C. 2323.52 unambiguously requires a party seeking to have another party declared a vexatious litigator under the statute must the commence a separate civil action instead of a motion. *Id.* at ¶ 10.

In the case before this Court, unlike *Kinstle*, the Eighth District Court found McGrath to be a vexatious litigator under the procedures set forth under Loc.App.R. 23(B), not R.C. 2323.52. *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157, ¶ ¶ 6-7. Moreover, the Eighth District Court found McGrath to be a vexatious litigator in response to a request by Appellees in their written motion for summary judgment to McGrath's Complaint III filed on September 20, 2011, not by oral motion as McGrath suggests.

McGrath also contends, without any factual or legal support, that the Eighth District Court's declaration that McGrath is a vexatious litigator violates his right to due process. But McGrath does not allege with any specificity how his due process rights have been violated. In *Mayer v. Bristow*, 91 Ohio St.3d 3, 2000-Ohio-109, this Court addressed a similar issue when a prison inmate claimed that his designation as a vexatious litigator under R.C. 2323.52 violated the Due Process Clause in Section 16, Article I of the Ohio Constitution.

In *Mayer* The Prosecuting Attorney of Richland County, Ohio filed a complaint in the Crawford County Court of Common Pleas to have a defendant in a criminal case declared a

vexatious litigator pursuant to R.C. 2323.52. The defendant admitted to all of the allegations contained in the complaint. The defendant's admission to being a vexatious litigator was made as part of his plea agreement.

The defendant in *Mayer* subsequently challenged his status as a vexatious litigator claiming that R.C. 2323.52 violated the Due Process Clause in Section 16, Article I of the Ohio Constitution by denying him access to Ohio courts. This Court in *Mayer* found that R.C. 2323.52 does not violate the Due Process Clause in Section 16, Article I of the Ohio Constitution. *Id.* at p. 18.

This Court in *Mayer* recognized that vexatious litigators often use litigation with seemingly indefatigable resolve and prolificacy to intimidate public officials or employees or cause emotional and financial decimation of their targets. *Mayer* at p. 13. This Court in *Mayer* explained that such conduct also undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow on the administration of justice. *Id.*

Consequently, this Court in *Mayer* found that R.C. 2323.52 bears a real and substantial relation to the general public welfare because its provisions allow for the preclusion of groundless suits filed by those who have a history of vexatious conduct. *Id.* at pp. 14-15. In addition, this Court in *Mayer* recognized that the statute is not designed, nor does it operate, to preclude vexatious litigators from proceeding forward on legitimate claims since vexatious litigators can petition the declaring court, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless. *Id.* at p. 14. As a result, this Court in *Mayer* found that R.C. 2323.52 was not arbitrary or unreasonable and does not deny vexatious litigators their constitutional right to access to the courts. *Id.* at pp. 14-16. Therefore, this Court in *Mayer* held, R.C. 2323.52 is constitutional in its entirety. *Id.* at p. 20.

Loc.App.R. 23(B), which contains many provisions similar to R.C. 2323.52 and serves the same purpose as R.C. 2323.52, prevents the abuse of the legal system by persons, such as McGrath, who persistently and habitually file lawsuits without reasonable grounds that clogs the courts, waste judicial resources, cause emotional and financial strain for their targets, and threaten the integrity of the judiciary. In addition, Loc.App.R. 23(B), like R.C. 2323.52(D)(1) provides that vexatious litigators can petition the declaring court for a determination of whether a proposed action is abusive or groundless.

As a result, Loc.App.R. 23(B) is not arbitrary or unreasonable and bears a real and substantial relation to the general public welfare. In addition, Loc.App.R. 23(B) does not deny vexatious litigators their constitutional right of access to the courts since a person declared a vexatious litigator can petition the declaring court, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless.

In addition, in the instant case McGrath had the opportunity to respond to Appellees' request that the Eighth District Court declare him a vexatious litigator in their motion for summary judgment to McGrath's Complaint III filed on September 20, 2011. In his brief in opposition to Appellees' motion for summary judgment to McGrath's Complaint III filed on October 4, 2011, McGrath never addressed Appellees' claim that McGrath should be declared a vexatious litigator.

Therefore, Loc.App.R. 23 is constitutional under the Due Process Clause of Section 16, Article I of the Ohio Constitution. Consequently, the Eighth District Court did not violate McGrath's right to due process under Article I, Section 16 of the Ohio Constitution when it declared him a vexatious litigator pursuant to Loc.App.R. 23(B).

McGrath also makes the remarkable unsupportable suggestion in his merit brief that some or possibly all of the cases cited by the Eighth District Court in Exhibit A of its opinion in *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157 in support of its determination the McGrath is a vexatious litigator involve a different Joseph McGrath. (McGrath's Merit Brief, p. 25). However, a review of the cases listed in Exhibit A of the Eighth District Court's opinion in *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157 for which there are published opinions confirm that the same McGrath that filed the appeal currently before this Court also filed the following actions:

Case No.	<u>Description on Exhibit A</u>	<u>Opinion</u>
1	<i>State v. McGrath</i> , Cuy. App. 77896	<i>State v. McGrath</i> , 8 th Dist. No. 77896, 2011 WL 1167152
6	<i>McGrath v. Gallagher</i> , Cuy. App. No. 81241	<i>McGrath v. Gallagher</i> , 8 th Dist. No. 81241, 2002-Ohio-3643
8	<i>State ex rel. McGrath v. Ohio</i> Cuy. App. No. 82287	<i>State ex McGrath v. Ohio Adult Parole Authority</i> , 8 th Dist. No. 82287, 2003-Ohio-1969
9	<i>State ex rel. McGrath v. Gilligan</i> , Cuy. App. No. 83884	<i>State ex rel. McGrath v. Gilligan</i> , 8 th Dist. No. 83884, 2005-Ohio-619
10	<i>McGrath v. Ohio Adult Parole Authority</i> , Cuy. App. No. 84362	<i>McGrath v. Ohio Adult Parole Authority</i> , 8 th Dist. No. 84362, 2004-Ohio-6114
11	<i>State v. McGrath</i> , Cuy. App. No. 85046	<i>State v. McGrath</i> , 8 th Dist. No. 85046, 2005-Ohio-4420
12	<i>State ex rel. McGrath v. Parma Muni. Court</i> , Cuy. App. No. 85601	<i>State ex rel. McGrath v. Parma Muni. Court</i> , 8 th Dist. No. 85601, 2005-Ohio-1201
13	<i>State ex rel. McGrath v. McDonnell</i> , Cuy. App. No. 87368	<i>State ex rel. McGrath v. McDonnell</i> . 8 th Dist. No. 87368, 2006-Ohio-535

14	<i>State ex rel. McGrath v. Cuyahoga Cty. Court of Common Pleas, Cuy. App. No. 89924</i>	<i>State ex rel. McGrath v. Cuyahoga Cty. Court of Common Pleas, 8th Dist. No. 89924, 2007-Ohio-4442</i>
16	<i>McGrath v. McFaul, Cuy. App. No. 90043</i>	<i>McGrath v. McFaul, 8th Dist. No. 90043, 2007-Ohio-4440</i>
20	<i>State v. McGrath, Cuy. App. No. 91261</i>	<i>State v. McGrath, 8th Dist. No. 91261, 2009-Ohio-1361</i>
25	<i>State v. McGrath, Cuy. App. No. 93445</i>	<i>State v. McGrath, 8th Dist. No. 93445, 2010-Ohio-4477</i>
27	<i>State ex rel. McGrath v. Matia, Cuy. App. No. 94147</i>	<i>State ex rel. McGrath v. Matia, 8th Dist. No. 94147, 2010-Ohio-1987</i>
30	<i>State ex rel. McGrath v. McDonnell, Cuy. App. No. 94819</i>	<i>State ex rel. McGrath v. McDonnell, 8th Dist. No. 94819, 2010-Ohio-2610</i>
31	<i>McGrath v. Bassett, Cuy. App. No. 96360</i>	<i>McGrath v. Bassett, 8th Dist. No. 96360, 8th Dist. No. 96360, 2011-Ohio-5666</i>
34	<i>State ex rel. McGrath v. Calabrese, Cuy. App. No. 97082</i>	<i>State ex rel. McGrath v. Calabrese, 8th Dist. No. 97082, 2011-Ohio-4833</i>
35	<i>State v. McGrath, Cuy. App. No. 97207</i>	<i>State v. McGrath, 8th Dist. No. 97207, 2012-Ohio-816</i>
36	<i>State ex rel. McGrath v. McClelland, Cuy. App. No. 97209</i>	<i>State ex rel. McGrath v. McClelland, 8th Dist. No. 97209, 2012-Ohio-157 (underlying case before this Court)</i>

The above cases initiated by McGrath as well as the additional cases listed in Exhibit A of the Eighth District Court's opinion in *State ex rel. McGrath v. McClelland*, 8th Dist. No. 97209, 2012-Ohio-157 establish that McGrath was properly declared a vexatious litigator by the Eighth District Court pursuant to Loc.App.R. 23(B) since he has continually taxed the limited resources of the Eighth District Court by filing approximately thirty-six separate actions over the past twelve years.

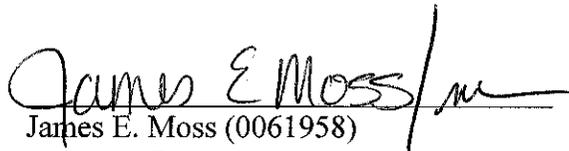
Therefore, for the foregoing reasons Appellees respectfully request that McGrath's fourth proposition of law be denied.

III. CONCLUSION

For the foregoing reasons, appellees Judge Robert McClelland and Cuyahoga County Clerk of Courts Gerald Fuerst respectfully request that this Honorable Court affirm the judgment of the Eighth District Court of Appeals' granting Appellees' Motion for Summary Judgment to Appellant's Complaint for Writ of Mandamus and/or Prohibition and declaring McGrath a vexatious litigator.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Appellees was sent this 29th day of August, 2012, by regular U.S. Mail to Joseph McGrath, Pro Se, Inmate # A570434, at Grafton Correctional Institution, 2500 South Avon Belden Road, Grafton, Ohio 44044.



James E. Moss
Assistant Prosecuting Attorney