

**IN THE SUPREME COURT OF OHIO**

<b>THE STATE OF OHIO EX REL.,</b>	:	<b>CASE NO. 2012-2024</b>
<b>JAMES HELFRICH,</b>	:	
	:	
<b>Relator/Appellant</b>	:	<b>APPEAL FROM THE COURT</b>
	:	<b>OF APPEALS FOR THE FIFTH</b>
	:	<b>APPELLATE DISTRICT</b>
<b>Vs.</b>	:	<b>CASE No. 12-CA-0071</b>
	:	
<b>JUDGE RICHARD M. MARKUS,</b>	:	
	:	
<b>Respondent/Appellee</b>	:	

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**RESPONDENT/APPELLEE'S MOTION TO DISMISS**

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**RECEIVED**  
DEC 12 2012  
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**FILED**  
DEC 12 2012  
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SUPREME COURT OF OHIO

## PROCEDURAL HISTORY

On March 16, 2007 Relator/Appellant, James Helfrich, filed a lawsuit in the Licking County Common Pleas Court (Case No. 07-CV-394) against Timothy Madison, Madison & Rosan, LLP, Carol Strickland, David Garner, and N.R.T. Columbus Inc., dba Coldwell Banker King Thompson Realty. Helfrich's Complaint asserted claims for "tortious interference with a business relationship, abuse of process and fraud." On April 13, 2007, the defendants filed a counterclaim to declare that Helfrich is a vexatious litigator pursuant to R.C.2323.52.

On March 4, 2011, following a seven day trial, the Licking County Common Pleas Court entered its judgment on the defendants' counterclaim that James Helfrich is a vexatious litigator governed by R.C. 2323.52. On February 13, 2012, the Court of Appeals for the Fifth Appellate District affirmed the decision of the trial court. *Helfrich v. Madison et al.*, 5<sup>th</sup> Dist. No. 11CA26, 2012-Ohio-551. On September 5, 2012, the Ohio Supreme Court declined to accept Helfrich's appeal of the decision of the Fifth Appellate District. Sup. Ct. Case No. 2012-0899.

On September 12, 2012, Helfrich filed an "Application to Proceed with Any and All Matters Relating to the Foregoing Petitin (sic) for Writ of Mandamus and Writ of Prohibition" in the Court of Appeals for the Fifth Appellate District (Case No. 12-CA-0071). Subsequently on September 21, 2012, Helfrich filed an "Amended Application to Proceed with Any and All Matters Relating to the Foregoing Petition for Writ of Mandamus and Writ of Prohibition" in Case No. 12-CA-0071.

On October 23, 2012, the Court of Appeals for the Fifth Appellate District denied both the application to proceed and the amended application to proceed. On October 29, 2012, Helfrich filed a Motion to Set Aside the October 23, 2012 Judgment Entry pursuant to Civ. R.

60(B). On December 3, 2012, the Court of Appeals for the Fifth Appellate District denied the Motion to Set Aside the October 23, 2012 Judgment Entry.

Helfrich filed a Notice of Appeal with this Court of the decision of the Court of Appeals for the Fifth Appellate District on December 4, 2012.

### LAW AND ARGUMENT

The current proceedings seek to appeal from a non-appealable order. R.C. 2323.52(G) provides:

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. (Emphasis added).*

In *Mayer v. Bristow*, 2000-Ohio-109, 91 Ohio St.3d 3, this Court upheld the validity of that statutory restriction.

The judgment entry dated October 23, 2012 from which Mr. Helfrich filed his Notice of Appeal is an order pursuant to R.C. 2323.52 (F). Accordingly, the Respondent asks this Court to dismiss this appeal as statutorily prohibited.

This Court previously dismissed this same vexatious litigator's appeals from the same appellate court's earlier order that denied him leave to file substantially the same action. Case Nos. 2011-0853 and 2011-0854. This Court subsequently dismissed this same vexatious litigator's original action for the same relief because it failed to state a legally cognizable claim. Case No. 2012-0817.

This Court has likewise dismissed appeals when other vexatious litigators sought to appeal from the denial of leave to file an action in a court of appeals. Cf. *State ex Rel. Bozsik*,

114 Ohio St.3d 1473 (Table), 2007-Ohio-3699, (dismissing appeal as “barred by R.C. 2323.52(G)”); *In re Bozsik*, 114 Ohio St.3d 1473 (Table), 2007-Ohio-3699 (dismissing appeal as “barred by R.C. 2323.52(G)”)). Indeed, in the two *Bozsik* cases, merit briefs had already been filed when this Court *sua sponte*, and without opinion, dismissed the appeals as being barred by statute.

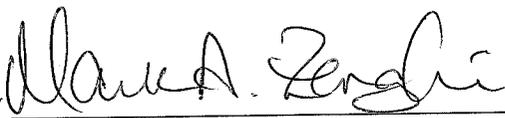
### CONCLUSION

The action filed by Helfrich before this Court clearly runs afoul of the provisions of division (G) of R.C. 2323.52. Based upon the foregoing law and argument this appeal should be summarily dismissed.

In view of this litigant’s persistent history of imposing purposeless burdens on adverse parties and this Court, we move the Court to classify him as a vexatious litigator here pursuant to S.Ct. Prac. R. 14.5(B), just as he has already been classified as a vexatious litigator for Ohio trial and appellate courts pursuant to R.C. 2323.52.

Respectfully submitted,

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LICKING COUNTY PROSECUTOR

By 

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*Attorney for Respondent/Appellee  
Judge Richard M. Markus*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion to Dismiss was served upon the Relator/Appellant, James Helfrich, at the address indicated on the cover page hereto by ordinary U.S. Mail, postage prepaid, this 11<sup>th</sup> day of December 2012.

KENNETH W. OSWALT  
LICKING COUNTY PROSECUTOR

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