

ORIGINAL

IN THE SUPREME COURT OF OHIO

THE STATE OF OHIO EX. REL.,
JAMES HELFRICH
P.O. Box 921
Pataskala, Ohio 43062

CASE NO. 2012-2024

Relator/Appellant,

Vs.

JUDGE RICHARD M. MARKUS,
Licking County Court of Common Pleas
1 Courthouse Square
Newark, Ohio 43058

ON APPEALS FROM THE FIFTH
DISTRICT COURT OF APPEALS

COURT OF APPEALS
CASE NO. 12-CA-0071

Respondent/Appellee.

BRIEF OF APPELLANT

JAMES HELFRICH
P.O. Box 921
Pataskala, Ohio 43062
(740) 927-7260
Appellant/Pro-se

Mark A. Zanghi
20 South Second Street 4th Floor
Newark, Ohio 43055
(740)670-5225
Attorney for Appellees

RECEIVED
JAN 14 2013
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SUPREME COURT OF OHIO

FILED
JAN 14 2013
CLERK OF COURT
SUPREME COURT OF OHIO

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Appendix:

1. Exhibit A-September 10, 2012-Order Deferring Consideration of the Application to Proceed Pro Se for Pending Cases Against Fenner, Rooks, and Cleaves.
2. Exhibit B-September 12, 2012-Petition for a Writ of Mandamus and Writ of Prohibition.
3. Exhibit C-October 23, 2012-Judgment Entry of the Appellate Court
4. Exhibit D-July 5, 2012-In Mandamus and Prohibition Entry of the Supreme Court.

ASSIGNMENT OF ERRORS

I. Did the Appellate Court error when it applied *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Supreme Court as a bar to an application to proceed?

II. Did the Appellate Court error when it applied *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Supreme Court without putting parties on notice?

ISSUES PRESENTED FOR REVIEW

- I. CAN THE COURT OF ORIGINAL JURISDICTION APPLY A SUPREME COURT CASE THAT WAS NEVER HEARD ON ITS MERITS AS A BAR?
- II. CAN THE COURT OF ORIGINAL JURISDICTION APPLY SUPREME COURT CASE NUMBER 2012-0817 WITHOUT PUTTING PARITES ON NOTICE?
- III. CAN THE COURT OF ORIGINAL JURISDICTION APPLY SUPREME COURT CASE NUMBER 2012-0817 AS A BAR TO AN ISSUE NOT RELATED TO ONE ANOTHER?
- IV. CAN THE APPELLATE COURT INTERVENE AND INSTRUCT OR ORDER THE TRIAL COURT ON HOW TO PROCEED WITH HELFRICH'S AUGUST 30, 2012 APPLICATION TO PROCEED WITH TWO SPECIFIC CASES?

STATEMENT OF THE CASE.

In 2011, Appellant/Relator Helfrich (here and after Helfrich) was declared a Vexatious Litigator. Since being declared a Vexatious Litigator, Helfrich has attempted to file no less than eleven (11) applications to proceed. Each time, the Trial Court denies them based on clerical issues such as printer type font. One time, the Trial Court denied because Helfrich did not disclose attorney-client privilege. Helfrich holds real property as his sole source of income for him and his family. The Trial Court has set up a separate docket and has applied different rules to deny Helfrich's applications to proceed. The Trial Court has yet to deny based on statutory requirements, but ever-changing instructions.

On or about August 30, 2012, Helfrich filed an application to proceed with the Trial Court. On December 10, 2012 the Trial Court deferred the ruling on the August 30, 2012 application to proceed because it claimed that Helfrich did not, among others, disclose attorney client privilege and Helfrich did not explain why he chose not to retain counsel. (Exhibit A) Those two mandates are not required by the statute of Vexatious Litigation and were continued discrimination against Helfrich by the Trial Court.

Given that on September 10, 2012, the Trial Court refused to rule on the August 30, 2012 application to proceed. On September 12, 2012, Helfrich filed a Petition for a Writ of Mandamus and a Writ of Prohibition as an original action with the Fifth District Court of Appeals, case number 12-CA-0071. (Exhibit B) On September 21, 2012, Helfrich amended that petition. Said petition was requesting the Appeals Court order the Trial Court to rule on applications to proceed pursuant to statute and not the Trial Court's historic abuse of Helfrich's rights.

Counsel for Judge Richard Markus, the Respondent/Appellee, (here and after Markus) on September 13, 2012, filed a response to that application and argued *res judicata*. Markus did not

cite a case, a date, and entry, or anything to support *res judicata*, he only made a statement that this issue was heard before. On October 23, 2012, the Appellate Court relied upon a case, *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Supreme Court. (Exhibit C)

LAW AND ARGUMENT

Supreme Court case number 2012-0817 is simply an entry granting opposing counsel's motion to dismiss. (Exhibit D) A closer look at Supreme Court case number 2012-0817, was a Petition for a Writ of Mandamus and Writ of Prohibition ordering Judge Markus to grant an application to proceed for a Jeff Kayser, Christine Hutchinson, Mark Broyles, Steve Williams and to determine that there were reasonable grounds to proceed. Markus, through counsel, then argued that the statute of Vexatious Litigation did not permit Helfrich to challenge a Trial Court's decision. As frustrating as it is, the statute of Vexatious Litigation does not permit Vexatious Litigators to challenge a Trial Court's denial of an application to proceed. Markus, in Supreme Court case number 2012-0817 successfully argued that Helfrich was denied right of review for the applications to proceed listed above.

Supreme Court case number 2012-0817 cannot be used as a bar to Helfrich's September 21, 2012 amended petition because that petition is not asking for any court to review or overturn Markus' decision on Helfrich's application to proceed of August 30, 2012. It was filed for the Appellate Court to order Markus to follow the statute of Vexatious Litigation when reviewing Helfrich's August 30, 2012 application to proceed, period. Simply stated, Helfrich was not challenging Markus' decision, simply because there was no decision yet made. It was asking the Appellate Court to order Markus to comply with the law when he made his decision.

Therefore, the Supreme Court case that the Appellate Court denied Helfrich's application to precede with his petition does not bar the petition and therefore, *res judicata* cannot apply.

The issue now before this court is distinctly different. The Appellate Court, having original jurisdiction, did not deny an application to proceed on its merits, it denied based on *res judicata* citing a case that was not argued by the parties and that related to a completely separate issue.

Helfrich now moves to this court so that it can determine if the Appellate Court can apply Supreme Court case number 2012-0817 as a bar to Helfrich's application to proceed with his September 12, 2012 Petition for a Writ of Mandamus and Writ of Prohibition.

The Appellate Court erred when it applied Supreme Court case 2012-0817 as a bar to Helfrich's application for a Petition for Writ of Mandamus and Writ of Prohibition .

ISSUES FOR REVIEW

I. Did the Appellate Court error when it applied *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Supreme Court as a bar to an application to proceed?

Case 2012-0817 cannot be used as a bar to Helfrich's application to proceed because that case relates to a completely different issue and was dismissed and never hear on its merits.

Helfrich attaches case 2012-0817 as exhibit D.

II. Did the Appellate Court error when it applied *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Supreme Court without putting parties on notice?

As previously stated, Helfrich filed his application to file a petition, opposing counsel then filed a notice in opposition and argued *res judicata* and did not cite any case. Helfrich could not have possibly responded other than to state the petition was not barred by *res judicata*, for

which Helfrich did. The Appellate Court, with original jurisdiction, erred when it applied a case which was never heard on its merits and for which Helfrich could not have responded.

CONCLUSION

For all the foregoing reasons, Appellant/ Relator Helfrich asks this court to reverse the Appellate Court's judgment entry, which barred Helfrich's application to proceed with a Petition for Writ of Mandamus and Writ of Prohibition. This will allow the Appellate Court to then review Helfrich's application to file a Petition for Writ of Mandamus and Writ of Prohibition.

Respectfully Submitted,



JAMES HELFRICH (Pro Se)
P.O. Box 921
Pataskala, Ohio
740-927-7260

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent to the following persons by regular

U.S. mail, postage prepaid and/or fax this 6th day of January, 2013:

//

Mark A. Zanghi
20 South Second Street 4th Floor
Newark, Ohio 43055
Fax: 740-670-5241



James Helfrich
P.O. Box 921
Pataskala, Ohio 43062

Exh. 517 A

CLERK OF COMMON PLEAS CT.
LICKING COUNTY, OHIO

IN THE COURT OF COMMON PLEAS
FOR LICKING COUNTY

2012 SEP 10 P 2:51

FILED

IN RE: JAMES HELFRICH)	CASE NO. 2011 MD 0006
)	
)	JUDGE RICHARD M. MARKUS
)	(Serving by Assignment)
)	
)	ORDER DEFERRING CONSIDERATION
)	OF THE APPLICATION TO PROCEED
)	PRO SE FOR PENDING CASES AGAINST
)	FENNERS, ROOKS, AND CLEAVES

On March 8, 2012, attorney C. Bernard Brush filed Licking County Municipal Court Case Number 12 CVG 496 on behalf of plaintiff James Helfrich and against defendants Angela Rooks and Sammy Cleaves. On July 12, 2012, attorney Brush filed Licking County Municipal Court Case Number 12 CVG 1647 on behalf of plaintiff James Helfrich against defendants Amber Fenner and Lucas Fenner. In each case, the Complaint alleged that Mr. Helfrich is the landlord of property in which the defendants are tenants. He sought to evict the defendants and to obtain a money judgment against each defendant for allegedly unpaid rent.

The publicly available docket for the case against defendants Rooks and Cleaves reports that the defendants have a pending counterclaim for wrongful eviction. The docket for the case against the Fenners reports that the plaintiff dismissed his eviction claim on July 26, 2012. On August 30, 2012, Mr. Helfrich filed a vexatious litigator's application for this court to grant him leave to proceed *pro se* for those two Licking County Municipal Court cases.

On March 4, 2011, this court determined that Mr. Helfrich is a vexatious litigator. The Court of Appeals affirmed that ruling, and the Supreme Court denied further review. This Court's resulting order directed:

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800

Pursuant to R.C. 2323.52(F), this court shall not grant him leave to file or continue any civil case without duly authorized legal counsel unless he satisfies this court that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for that proceeding or application. (underlining emphasis added)

On March 15, 2011, this court filed Instructions to the Applicant and the Clerk of Court to facilitate that process. The Court of Appeals and the Supreme Court subsequently rejected the applicant's multiple efforts to disregard or avoid those Instructions.

Neither the vexatious litigator statute nor this court's orders affected Mr. Helfrich's ability to retain duly licensed legal counsel to assert his claims. Accordingly, he did not require this court's leave for his attorney to file those two cases. In each case, the applicant's attorney subjected himself to sanctions including disciplinary proceedings if he asserted an unsupportable claim or employed contemptuous language.

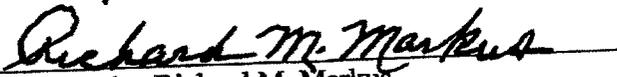
In his application for leave to proceed *pro se* in those two municipal court cases, Mtr. Helfrich does not explain why he chose to retain counsel to file those cases rather than asking this Court to file them *pro se*. Nor does he explain why he now proposes to pursue them without counsel. Though he bitterly complained to the appeals court and the Supreme Court that this Court's Instructions unfairly require him to file typewritten or printer font applications rather than handwritten documents, this three page application has no handwriting. Though he stridently complained that the municipal court requires him to handwrite his allegations on its preprinted form, he attaches the short two-page typewritten Complaint his lawyer filed for each of these two cases.

Mr. Helfrich's actions here suggest that he now seeks to circumvent this Court's

Instructions by retaining counsel briefly and then proceeding *pro se* without complying with those Instructions. He repeatedly asserts that a vexatious litigator need only notify the supervising court that he proposes to proceed *pro se* in order to obtain automatic approval. He seems determined to prove that he need not comply with this Court's relatively simple directions and to proceed unimpeded by the supervision that the vexatious litigator law establishes. This Court's Instructions provide:

1. If Mr. Helfrich seeks leave to file any new case or to pursue any existing case in any of those courts, he shall file a typewritten or printer font Application for Leave to take that action. The Clerk shall file all such Applications in this Court Case Number and send this assigned judge a copy for consideration.
2. For any such Application, Mr. Helfrich shall attach a typewritten or printer font copy of his pleading for the proposed action, together with one or more affidavits from himself or others with any necessary supporting material to show the factual basis for each claim in that pleading. (underlining emphasis added)

His current application satisfies part of those Instructions but omits his affidavit to show a factual basis for each claim. Accordingly, this Court will defer its consideration of this application for thirty days to permit him to file that affidavit.


Judge Richard M. Markus,

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS ORDER
TO JAMES HELFRICH AND THE ASSIGNED VISITING JUDGE

IN THE COURT OF APPEALS
FIFTH APPELLATE DISTRICT
LICKING COUNTY, OHIO

FILED

2012 SEP 12 PM 4:01

CLERK OF COURT
OF APPEALS
LICKING COUNTY, OH
GARY R. WALTERS

THE STATE OF OHIO EX. REL.,
JAMES HELFRICH
P.O. Box 921
Pataskala, Ohio 43062

CASE NO.

12 CA 0071

Relator,

PETITION FOR A WRIT OF
MANDAMUS AND WRIT OF
PROHIBITION.

vs.

JUDGE RICHARD M. MARKUS,
Licking County Court of Common Pleas
1 Courthouse Square
Newark, Ohio 43058

Exhibit A B

Respondent.

**APPLICATION TO PROCEED WITH ANY AND ALL MATTERS RELATING TO THE
FOREGOING PETITIN FOR ~~WRIT~~ OF MANDAMUS AND ~~WRIT~~ OF PROHIBITION**

Now comes Relator, James Helfrich, pursuant to O.R.C. § 2731.04, and for his Petition states:

1. Relator is a citizen and resident of Licking County, Ohio.
2. Respondent is a retired Judge of the State of Ohio, assigned to duty in the Court of Common Pleas of Licking County by The Honorable Thomas Moyer, Chief Justice of the Supreme Court of Ohio.
3. On August 30, 2012, Helfrich filed an application to proceed with all matters related to two complaints. Helfrich had requested application to proceed with the second cause of action. To date, Judge Richard Markus has failed to rule, therefore is denying Helfrich right of remedy, and right to hold and defend real property.

4. Helfrich is asking this court to rule on his application to proceed and or order Judge Markus to rule pursuant to the statute of 2323.52.
5. Helfrich is asking this court to sanction the respondents.
6. The Revised Code only provides for Respondent to determine whether the proceeding or application is not an abuse of discretion and there are reasonable grounds for the proceeding or application for leave.
7. Respondent has no jurisdiction or authority to place limitations on the manner in which Relator drafts his complaints, which will be subject to the Ohio Rules of Civil Procedure and the Rules of Court where said civil actions will be instituted.
8. Ohio Revised Code section 2323.52 only permits the Respondent to review the intended filing and determine whether the Relator has reasonable grounds for filing the action.
9. The authority of Respondent to determine whether the Relator has reasonable grounds for proceeding with a claim is governed and limited by O.R.C. § 2323.52.
10. Rule 5 of the Rules of Superintendence of Courts provides specific guidelines for the issuance of Local Rules of Court.
11. Respondent had no authority to issue rules to Relator for the manner of documents to be filed in other Courts.
12. An order granting damages pursuant to O.R.C. § 2731.11, Relator's costs, reasonable attorney fees, punitive damages and all other legal and equitable remedies this Honorable Court deems appropriate.



JAMES HELFRICH (Pro Se)
P.O. Box 921
Pataskala, Ohio
740-927-7260

AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF LICKING)

SS

JAMES HELFRICH, being first duly sworn, says that he is over the age of eighteen years of age, competent to testify on all matters contained within the Petition that that the statements contained within this Petition for a Writ of Mandamus and Writ of Prohibition are true as he verily believes.

State of Ohio
County of Licking

This 12th day of September 2012



LORI HITCHINGS
Notary Public, State of Ohio
My Commission Expires May 8, 2013

[Handwritten Signature]

CLERK OF COURTS
OF APPEALS
LICKING COUNTY OH
GARY R. WALTERS

THE STATE OF OHIO EX REL.
JAMES HELFRICH

Relator

-vs-

JUDGE RICHARD M. MARKUS

Respondent

Case No. 12CA0071

JUDGMENT ENTRY

Exhibit B C

This matter came before the Court upon the "Application to Proceed with Any and All Matters Relating to the Foregoing Petition (sic) for Writ of Mandamus and Writ of Prohibition."

Ohio Revised Code Section 2323.52(F)(2) provides in part, "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. * * *"

Relator challenged Judge Markus' "Instructions" in *The State of Ohio ex rel. James Helfrich v. Judge Richard M. Markus*, Case No. 2012-0817, filed in the Ohio Supreme Court. Relator's complaint therein for Writ of Mandamus and Prohibition was dismissed via entry filed July 5, 2012. Based upon the Ohio

Supreme Court's decision in that matter, this Court is not satisfied there are reasonable grounds for the instant proceedings. Accordingly, Appellant's Application to Proceed is denied.¹

MOTION DENIED.

COSTS TO RELATOR.

IT IS SO ORDERED.

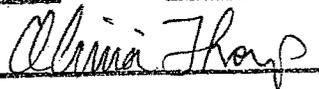

JUDGE WILLIAM B. HOFFMAN


JUDGE PATRICIA A. DELANEY


JUDGE SHEILA G. FARMER

WBH/AS/ag 10-2-12

IN COMPLIANCE WITH CIVIL RULE 58,
IT IS VERIFIED THAT COPIES HAVE BEEN
SENT TO THE PARTIES AND/OR THEIR ATTORNEY
OF RECORD IN A MANNER PRESCRIBED BY CIVIL
RULE 5(B) ON THIS 23rd DAY OF October 2012



¹ Based upon the same rationale, Relator's Amended Application is likewise denied.

The Supreme Court of Ohio

FILED

JUL 05 2012

CLERK OF COURT
SUPREME COURT OF OHIO

The State of Ohio ex rel. James Helfrich

Case No. 2012-0817

v.

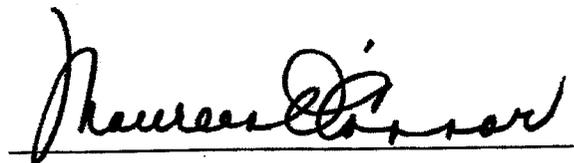
IN MANDAMUS AND PROHIBITION

Judge Richard M. Markus

ENTRY

This cause originated in this court on the filing of a complaint for a writ of mandamus and prohibition.

Upon consideration of respondent's motion to dismiss, it is ordered by the court that the motion to dismiss is granted. Accordingly, this cause is dismissed.



Maureen O'Connor
Chief Justice

Exh. 517 
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