

THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
GEAUGA COUNTY, OHIO

DAVID P. JOYCE, AS GEAUGA COUNTY PROSECUTOR,	:	O P I N I O N
	:	CASE NO. 2008-G-2817
Plaintiff-Appellee,	:	
- vs -	:	
WILLIAM GODALE,	:	
Defendant-Appellant.	:	

Civil Appeal from the Court of Common Pleas, Case No. 05 M 000504.

Judgment: Affirmed.

David P. Joyce, Geauga County Prosecutor, *Rebecca F. Schlag* and *Bridey Matheney*, Assistant Prosecutors, Courthouse Annex, 231 Main Street, Chardon, OH 44024 (For Plaintiff-Appellee).

William Godale, pro se, 8216 Mayfield Road, Chesterland, OH 44026 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} William Godale appeals from the grant of summary judgment by the Geauga County Court of Common Pleas to David P. Joyce, as Geauga County Prosecutor, finding Mr. Godale to be a vexatious litigator pursuant to R.C. 2323.52. We affirm.

{¶2} This is the latest appeal arising from a dispute between Mr. Godale and the authorities of Chester Township, regarding his use of certain property owned by his corporation, Master Realty, and located at 8216 Mayfield Road. The saga commenced no later than February 20, 1982, when the Board of Trustees of Chester Township moved the trial court for preliminary and permanent injunctions enjoining Mr. Godale and others from storing abandoned and unlicensed vehicles, and other junk, at the Mayfield Road premises, in violation of the township zoning laws. A permanent injunction issued from the trial court July 2, 1982, and Mr. Godale has fought it ever since. A history of five of the appeals related to this dispute is contained in our opinion in *Bd. of Trustees of Chester Twp. v. Baumgardner*, 11th Dist. No. 2006-G-2721, 2007-Ohio-1783, at ¶2-12. Altogether, at our best count, this is the twelfth appeal stemming from the matter. Mr. Godale lost on each of the prior eleven appeals, save *Bd. of Trustees of Chester Twp. v. Baumgardner*, 11th Dist. No. 2003-G-2492, 2004-Ohio-3683, wherein we held rulings of the trial court on certain motions filed by Mr. Godale to be null and void, since they were made during the pendency of Mr. Godale's appeal in *Bd. of Trustees of Chester Twp. v. Baumgardner*, 11th Dist. No. 2002-G-2430, 2003-Ohio-4361.

{¶3} This case commenced June 6, 2005, when the Geauga County Prosecutor filed his complaint to have Mr. Godale declared a vexatious litigator. Mr. Godale answered August 22, 2005. He further "cross claimed" pursuant to an unidentified section of Title 28, U.S. Code, and demanded a change of venue to the federal courts. September 19, 2005, Mr. Godale moved to stay the proceedings. September 22, 2005, the trial court filed a judgment entry, deeming Mr. Godale's

demand for change of venue to be a motion to remove, and properly labeling his cross claim as a counterclaim. The Geauga County Prosecutor answered the counterclaim October 20, 2005. He further opposed removal to the federal courts.

{¶4} October 28, 2005, Mr. Godale filed a motion to amend his answer and counterclaims, with the proposed amendment attached. In it he alleged that Chester Township, various township and county employees, past and present, and one hundred John Doe defendants, were depriving him of his constitutional rights, conspiring to oppress him, had intentionally inflicted emotional distress upon him, and invaded his privacy.

{¶5} November 14, 2005, the trial court both denied Mr. Godale's motion to stay and his proposal to remove the action to the federal courts.

{¶6} December 1, 2005, the Geauga County Prosecutor filed a brief in opposition to Mr. Godale's proposed amendment to his answer and counterclaims. That same day, he moved for summary judgment. December 12, 2005, Mr. Godale filed his brief in opposition to the summary judgment motion. Therein, he failed to make any real argument against the motion, but merely reiterated his conviction that the authorities were conspiring to deprive him of his livelihood.

{¶7} January 31, 2006, the trial court denied Mr. Godale's motion to amend his answer and counterclaims. That same day, the trial court granted summary judgment to the Geauga County Prosecutor, and declared Mr. Godale a vexatious litigator. February 7, 2006, Mr. Godale moved for findings of fact and conclusions of law. February 22, 2006, the Geauga County Prosecutor filed his opposition. March 1, 2006, Mr. Godale noticed appeal of the trial court's judgment. March 23, 2006, the trial court

denied his motion for findings of fact and conclusions of law. May 15, 2006, Mr. Godale filed his assignments of error and merit brief on appeal. The Geauga County Prosecutor filed his answer brief May 30, 2006.

{¶8} By an opinion and judgment entry filed February 5, 2007, we reversed and remanded the trial court's grant of summary judgment, finding the evidence used in support of the motion insufficient under Civ.R. 56. February 15, 2007, the Geauga County Prosecutor moved us to certify a conflict to the Supreme Court of Ohio. March 20, 2007, he appealed our judgment to that court. April 6, 2007, we denied the motion to certify. April 12, 2007, Mr. Godale moved us for an award of fees and expenses. The Geauga County Prosecutor opposed; and, by a judgment entry filed May 4, 2007, we denied the motion, finding no bad faith in the filing of the action to declare Mr. Godale a vexatious litigator.

{¶9} July 9, 2007, the Supreme Court of Ohio declined jurisdiction of the Geauga County Prosecutor's appeal.

{¶10} October 11, 2007, the Geauga County Prosecutor refiled his motion for summary judgment.

{¶11} January 4, 2008, Mr. Godale subpoenaed the trial judge, and demanded he recuse himself. The basis for these actions was an allegation that the trial judge had received campaign contributions from Mr. Robert Petronzio, whose business premises abut Mr. Godale's. The subpoena demanded that the trial judge provide information regarding his campaign election funds, as well as any communications from the neighboring business owners. That same day, Mr. Godale filed his opposition to the renewed summary judgment motion.

{¶12} By a judgment entry filed January 7, 2008, the trial court quashed the subpoena, noting that the materials sought were matters of public record, and that it was improper to try to subpoena the judge presiding over a case one day before a status conference.

{¶13} January 11, 2008, the trial court filed its judgment entry denying the motion to recuse. That same day, it filed its judgment entry granting the motion for summary judgment, and declared Mr. Godale a vexatious litigator.

{¶14} January 15, 2008, Mr. Godale filed an affidavit of prejudice with the Clerk of the Supreme Court of Ohio, seeking the trial judge's disqualification pursuant to R.C. 2701.03. February 7, 2008, the Chief Justice of Ohio filed his judgment entry, denying the affidavit, on the basis that vague, unsubstantiated allegations against a trial judge by a litigant provide no basis for disqualification.

{¶15} February 11, 2008, Mr. Godale noticed this appeal. February 13, 2008, the Geauga County Prosecutor moved to dismiss, alleging Mr. Godale had failed to seek leave of this court to proceed within the thirty day time limit for noticing appeal, as a vexatious litigator is required to do pursuant to R.C. 2323.52(F)(2). Mr. Godale responded with a flurry of motions over the ensuing months. June 4, 2008, we filed our judgment entry, holding that Mr. Godale had adequately sought leave to proceed in a motion attached to the notice of appeal itself.

{¶16} July 3, 2008, Mr. Godale filed his merit brief, assigning three errors:

{¶17} "[1.] The trial court abused its discretion granting summary judgment in favor of the appellee's finding [the] appellant a vexatious litigator in violation of the Ohio and United States Constitutions, based on the fact the Appellant's Argument that the

Township Resolution Prohibiting the [Sale] of Used Automobiles at the Appellant's Location is Prohibited and *** Of No Force and Effect Based on the Appellant's Ohio Dealers License Issued by The State of Ohio Governed by General Law to Sell Used Automobiles at the Appellant's location [.]

{¶18} “[2.] The Trial Court Abused its Discretion and/or Committed Plain Error Granting the Appellee's Motion for Summary Judgment finding the Appellant a Vexatious Litigator in Violation of the Ohio and United States Constitutions, Based on the Fact the Appellant's Argument that The Township Resolution that the Injunction was Based upon has Been Amended and/or Repealed and is in Conflict with The General Laws and Based Upon the Cumulative Effects of All Issues Combined [.]

{¶19} “[3.] The Trial Court Judge Abused his Discretion and/or Committed Plain Error By Granting Summary Judgment in Favor of The Appellee's (sic) in Violation of the Code of Judicial Conduct and Ohio and United States Constitutions When the Trial Court Judge After Being Subpoenaed as a Material Witness and to Produce Documents Refused to Recuse himself In Violation of The Code of Judicial Conduct [.]”

{¶20} First, Mr. Godale is mistaken when he asserts an appellate court reviews a grant of summary judgment for abuse of discretion or plain error. Rather, we review it de novo. *Grafton v. Ohio Edison Co.* (1996), 77 Ohio St.3d 102, 105.

{¶21} “‘Pursuant to Civ.R. 56(C), summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.’ *Holik v. Richards*, 11th Dist. No. 2005-A-0006, 2006-Ohio-2644, ¶12, citing *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 293, ***. ‘In addition, it must appear

from the evidence and stipulations that reasonable minds can come to only one conclusion, which is adverse to the nonmoving party.’ *Id.* citing Civ.R. 56(C). ***.

{¶22} “Accordingly, ‘(s)ummary judgment may not be granted until the moving party sufficiently demonstrates the absence of a genuine issue of material fact. The moving party bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s claim.’ *Brunstetter v. Keating*, 11th Dist. No. 2002-T-0057, 2003-Ohio-3270, ¶12, citing *Dresher* at 292. ‘Once the moving party meets the initial burden, the nonmoving party must then set forth specific facts demonstrating that a genuine issue of material fact does exist that must be preserved for trial, and if the nonmoving party does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party.’ *Id.*, citing *Dresher* at 293.

{¶23} “***

{¶24} “***

{¶25} “Since summary judgment denies the party his or her ‘day in court’ it is not to be viewed lightly as docket control or as a ‘little trial.’ The jurisprudence of summary judgment standards has placed burdens on both the moving and the nonmoving party. In *Dresher v. Burt*, the Supreme Court of Ohio held that the moving party seeking summary judgment bears the initial burden of informing the trial court of the basis for the motion and identifying those portions of the record before the trial court that demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s claim. The evidence must be in the record or the motion cannot

succeed. The moving party cannot discharge its initial burden under Civ.R. 56 simply by making a conclusory assertion that the nonmoving party has no evidence to prove its case but must be able to specifically point to some evidence of the type listed in Civ.R. 56(C) that affirmatively demonstrates that the nonmoving party has no evidence to support the nonmoving party's claims. If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied. If the moving party has satisfied its initial burden, the nonmoving party has a reciprocal burden outlined in the last sentence of Civ.R. 56(E) to set forth specific facts showing there is a genuine issue for trial. If the nonmoving party fails to do so, summary judgment, if appropriate shall be entered against the nonmoving party based on the principles that have been firmly established in Ohio for quite some time in *Mitseff v. Wheeler* (1988), 38 Ohio St.3d 112, ***.

{¶26} “The court in *Dresher* went on to say that paragraph three of the syllabus in *Wing v. Anchor Media, Ltd. of Texas* (1991), 59 Ohio St.3d 108, ***, is too broad and fails to account for the burden Civ.R. 56 places upon a *moving* party. The court, therefore, limited paragraph three of the syllabus in *Wing* to bring it into conformity with *Mitseff*. (Emphasis added.)

{¶27} “The Supreme Court in *Dresher* went on to hold that when *neither* the moving nor nonmoving party provides evidentiary materials demonstrating that there are no material facts in dispute, the moving party is not entitled to a judgment as a matter of law as the moving party bears the initial responsibility of informing the trial court of the basis for the motion, ‘and identifying those portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the nonmoving party’s

claim.’ Id. at 276. (Emphasis added.)” *Welch v. Ziccarelli*, 11th Dist. No. 2006-L-229, 2007-Ohio-4374, at ¶¶36-37, 40-42. (Parallel citations omitted.)

{¶28} Prior to analyzing the errors assigned, we turn our attention briefly to the statute regarding “vexatious litigators,” R.C. 2323.52. R.C. 2323.52(A) provides, in relevant part:

{¶29} “(2) ‘Vexatious conduct’ means conduct of a party in a civil action that satisfies any of the following:

{¶30} “***

{¶31} “(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.

{¶32} “(c) The conduct is imposed solely for delay.

{¶33} “(3) ‘Vexatious litigator’ means any 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 ***[.]”

{¶34} County prosecutors are amongst the various persons who may bring an action in the court of common pleas to determine if someone is a vexatious litigator. R.C. 2323.52(B). Further, if someone is found to be a vexatious litigator, the court of common pleas so finding may enter an order requiring that person to obtain leave of court prior to proceeding with any civil legal action. See, e.g., R.C. 2323.52(D)(1). A

vexatious litigator is required to seek leave of a court of appeals prior to commencing or continuing any action on appeal. R.C. 2323.52(D)(3).

{¶35} Under his first assignment of error, Mr. Godale notes that he has a license to deal in used automobiles issued by the state, and argues that this license, issued under the general laws of Ohio, preempts any local zoning ordinance. Consequently, he postulates that he must be allowed to sell used cars from his property at 8216 Mayfield Road.

{¶36} Mr. Godale has raised this argument previously. See, e.g., *Bd. of Trustees of Chester Twp. v. Baumgardner*, supra, at ¶37. We squarely rejected it. *Id.* at ¶38-40. As we noted, “local ordinances cannot alter statewide law – but the Chester Township zoning resolution has no relationship whatsoever with the licensing of used car sales, and does not purport to alter or effect such licensing. It is directed to something entirely different: where used cars may be stored or sold.” *Id.* at ¶40, fn. 1. We reject the argument again.

{¶37} The first assignment of error lacks merit.

{¶38} Under his second assignment of error, Mr. Godale argues that the 1982 permanent injunction is no longer valid, since the statute controlling the powers of township zoning authorities, as well as the particular zoning resolution being enforced by the injunction, have been amended in the meantime.

{¶39} Mr. Godale favors us with no authority as to how any amendments to the general laws governing the powers of township zoning authorities undermine the 1982 injunction. He simply asserts they do. And, we have previously held that the amended

Chester Township zoning resolution still supports the 1982 injunction. *Godale v. Chester Twp. Bd. of Trustees*, 11th Dist. No. 2004-G-2571, 2005-Ohio-2521, at ¶51.

{¶40} The second assignment of error lacks merit.

{¶41} By his third assignment of error, Mr. Godale attacks the learned trial judge for failing to recuse himself. He accuses his neighbor, Mr. Robert Petronzio, of coveting his property, and postulates that the trial judge is part of a conspiracy organized by Mr. Petronzio, in return for campaign contributions.

{¶42} We make two observations regarding this assignment of error.

{¶43} First, the sole power to disqualify a judge of a court of common pleas or a court of appeals lies with the Chief Justice of Ohio, or his designee. See, e.g., R.C. 2701.03(D)(1) and (E). Mr. Godale filed his affidavit of disqualification against the trial judge presiding over this matter, and it was completely rejected by the chief justice. This court is without power to review the actions of the Chief Justice of Ohio under R.C. 2701.03.

{¶44} Second, the principal “evidence” submitted by Mr. Godale in connection with his affidavit of disqualification is a copy of a March 21, 2005 letter sent to him by Mr. Petronzio, denying Mr. Godale permission to use his parking lot relative to an auction Mr. Godale planned at his establishment for March 26, 2005. In that letter, Mr. Petronzio recounts that Mr. Godale has, at various times, parked buses in an easement, moved a backhoe filled with mud through the parking lot, and dumped snow in front of Mr. Petronzio’s doors. If true – and Mr. Godale is the person making this part of the record – these allegations underscore that Mr. Godale, who views his own property rights as sacred, has little regard for those of others.

{¶45} The third assignment of error lacks merit.

{¶46} Attached to his motion for summary judgment, the Geauga County Prosecutor presented overwhelming evidence, sufficient under Civ.R. 56, that Mr. Godale habitually files unnecessary, inappropriate, or supernumerary pleadings and motions. Further, the record shows that Mr. Godale insists on raising and re-raising arguments which have been rejected by the trial court, and this court, sometimes repeatedly. We are sympathetic to a party who feels he has suffered an injustice, and takes all measures *within* the law to correct that. Sadly, Mr. Godale's actions have long passed this stage. His conduct in the various matters stemming from his zoning dispute with Chester Township is "vexatious," within the meaning of the statute, in that "[t]he 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." R.C. 2323.52(A)(2)(b). His conduct is also "vexatious" insofar as some of it "is imposed solely for delay." R.C. 2323.52(A)(2)(c).

{¶47} The judgment of the Geauga County Court of Common Pleas is affirmed.

{¶48} It is the further judgment of this court that appellant is assessed costs herein taxed.

{¶49} The court finds there were reasonable grounds for this appeal.

TIMOTHY P. CANNON, J., concurs,

DIANE V. GRENDALL, J., concurs in judgment only.