

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

TRUMBULL MEMORIAL HOSPITAL,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	CASE NO. 2009-T-0043
- vs -	:	
DELORES KARNOFEL,	:	
Defendant-Appellant.	:	

Civil Appeal from Court of Common Pleas, Case No. 2008 CV 00874.

Judgment: Appeal dismissed.

Bobbie L. Flynt, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, #926, Youngstown, OH 44503-1811 (For Plaintiff-Appellee).

Delores Karnofel, pro se, 1528 Greenwood Avenue, Girard, OH 44420 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellant, Delores Karnofel, has moved this court for leave, as a declared vexatious litigator under R.C. 2323.52, to bring the instant appeal from the trial court's judgment of May 8, 2009. In that judgment, the trial court directed the clerk of courts to send a certified copy of its earlier determination to the Supreme Court of Ohio so that appellant's name could be included in the published list of individuals who had been found to be vexatious litigators.

{¶2} Our review of the trial court docket indicates that appellee, the Trumbull

Memorial Hospital, instituted the underlying action against appellant in March 2008. In its complaint, appellee requested that appellant be declared a vexatious litigator under R.C. 2323.52, based primarily upon certain pleadings which she had filed in a separate medical malpractice proceeding before the Girard Municipal Court. After the trial court had denied appellant's motion to dismiss the "vexatious litigator" claim, the parties filed competing motions for summary judgment on the entire matter. On October 6, 2008, the trial court rendered a final judgment in which it overruled appellant's summary judgment motion, granted appellee's motion, and specifically declared appellant to be a vexatious litigator.

{¶3} Appellant immediately appealed the October 6, 2008 decision to this court. In *Trumbull Memorial Hosp. v. Karnofel*, 11th Dist. No. 2008-T-0115, 2009-Ohio-1488, we affirmed the "vexatious litigator" determination in all respects. Specifically, we held that there had been no factual dispute that appellant's behavior during the malpractice proceeding had constituted vexatious conduct under the governing statute.

{¶4} Within forty days of the issuance of our opinion, the trial court released the new judgment which forms the subject matter of the instant appeal. Our review of the appealed entry readily shows that it did not set forth any new determination in regard to appellant's status as a vexatious litigator. Instead, the judgment only provided that, in light of our decision to uphold the original determination, a certified copy of the October 6, 2008 judgment must be sent to the Supreme Court of Ohio.

{¶5} Given the outcome of appellant's first appeal from the underlying action, her ability to bring new legal proceedings before an appellate court is now governed by R.C. 2323.52(F)(2). This provision of the "vexatious litigator" statute indicates that,

once a person has been designated as a vexatious litigator, she is required to move the appellate court for leave to proceed before she can institute any new proceeding in that court. As to the standard which the appellate court should apply in ruling upon the final merits of the motion for leave, R.C. 2323.52(F)(2) further states that a vexatious litigator should not be allowed to go forward “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.”

{¶6} As was noted above, in conjunction with the filing of her notice of appeal in the instant matter, appellant also specifically moved for leave to proceed in accordance with the foregoing provisions. However, our review of that document demonstrates that appellant did not attempt to set forth any explanation as to the basis for the appeal; i.e., she did not refer to any reasonable grounds in support of her request. Rather, appellant simply asserted that she had filed the motion for leave because she was required to do so in light of the prior “vexatious litigator” determination.

{¶7} As an aside, this court would note that, before we could fully consider her request for leave, appellant submitted her brief for this appeal. In that submission, she never addresses the actual substance of the specific judgment from which she seeks to maintain the appeal. Instead, her brief only raises issues pertaining to the merits of her prior medical malpractice action and the merits of the “vexatious litigator” determination. Specifically, appellant’s three assignments of error assert the following questions: (1) did the trial court in the underlying case fail to consider the “evidence” she presented as part of the summary judgment exercise; (2) did the trial court fail to hold a “fair” hearing on the summary judgment motions prior to making the “vexatious litigator” decision; and

(3) did the trial court engage in “fraud” when it supposedly based its “vexatious litigator” ruling upon the fact that she was representing herself in the case?

{¶8} In light of the nature of her three assignments, it is readily apparent that appellant intended to use the instant appeal as a means of re-litigating the final merits of the trial court’s “vexatious litigator” determination, as delineated in the trial court’s final judgment of October 6, 2008. However, given that the substance of that determination was fully reviewed by this court in appellant’s first appeal, the doctrine of res judicata bars further consideration of that decision in the context of a separate appeal. In other words, appellant cannot employ this appeal to essentially seek reconsideration of our original opinion on this matter.

{¶9} In regard to the appealed judgment of May 8, 2009, appellant has failed to establish that she will be able to raise a viable argument contesting the propriety of the trial court’s order to certify its prior determination to the Supreme Court. To this extent, she has not shown reasonable grounds for this second appeal. As a result, an abuse of process would ensue if this new proceeding was allowed to go forward.

{¶10} Pursuant to the foregoing analysis, appellant’s motion for leave to proceed is overruled. It is the order of this court that the instant appeal is hereby dismissed.

MARY JANE TRAPP, P.J.,

DIANE V. GRENDALL, J.,

concur.