

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

TRUMBULL MEMORIAL HOSPITAL,	:	MEMORANDUM OPINION
Plaintiff-Appellee,	:	CASE NO. 2009-T-0101
- vs -	:	
DELORES KARNOFEL,	:	
Defendant-Appellant.	:	

Civil Appeal from the 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, 1528 Greenwood Avenue, Girard, OH 44420 (Defendant-Appellant).

COLLEEN MARY O'TOOLE, J.

{¶1} October 7, 2009, Delores Karnofel appealed the judgment of the Trumbull County Court of Common Pleas, denying her motion for leave to proceed, in order to file a motion for relief from judgment. Ms. Karnofel has been declared a “vexatious litigator,” and requires leave of court prior to pursuing proceedings in civil matters in this state. Simultaneously with her notice of appeal in this case, Ms. Karnofel applied for leave to proceed with her appeal in this court. December 3, 2009, she further applied for leave to file her memorandum in support. Finding no reasonable grounds for these

proceedings, we deem it would be an abuse of process to allow this appeal to continue. Consequently, we deny Ms. Karnofel's applications for leave to proceed, and dismiss this appeal.

{¶2} August 18, 2004, Ms. Karnofel filed a pro se action in the Girard Municipal Court, Case No. 2004 CVI 691, alleging medical malpractice in misdiagnosing her medical condition by appellee, Trumbull Memorial Hospital and Northcoast Behavioral Healthcare, as well as wrongful detention by the Girard Police Department, the Girard Fire Department, and Douglas and Donna Beck. Cf. *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2004-T-0145, 2005-Ohio-6154, at ¶2. At the September 2004 trial in the Girard Municipal Court, Ms. Karnofel failed to present expert medical testimony; thereafter, the Girard Municipal Court ruled in favor of Trumbull Memorial Hospital. Ms. Karnofel appealed to this court, and, by a decision dated November 18, 2005, we affirmed. Id. at ¶23. Ms. Karnofel sought review by the Supreme Court of Ohio, which declined jurisdiction. *Karnofel v. Girard Police Dept.*, 108 Ohio St.3d 1512, 2006-Ohio-1329. Ms. Karnofel petitioned the United States Supreme Court for a writ of certiorari, which the Court denied. *Karnofel v. Girard Police Dept.* (2006), 549 U.S. 1022.

{¶3} Ms. Karnofel then filed a motion for relief from judgment in the Girard Municipal Court, claiming newly discovered evidence. *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2006-T-0063, 2007-Ohio-7114, at ¶1, 6. The Girard Municipal Court struck the motion, and ordered her to cease filing pleadings. Id. at ¶1. Ms. Karnofel appealed; and, December 31, 2007, we reversed and remanded, holding that the trial court erred procedurally in striking the motion for relief, rather than considering it. Id. at ¶14-18.

{¶4} Ms. Karnofel refiled her motion for relief from judgment with the Girard Municipal Court, which overruled the motion February 27, 2008. *Karnofel v. Girard Police Dept.*, 11th Dist. Nos. 2008-T-0043 and 2008-T-0048, 2008-Ohio-4414, at ¶4. Between March 5, 2008, and May 20, 2008, Ms. Karnofel moved that court for reconsideration three times, each time being denied. *Id.* at ¶4-5. She appealed; and August 29, 2008, we dismissed the appeal for lack of jurisdiction, finding her motions for reconsideration to have been nullities. *Id.* at ¶7-10.

{¶5} Ms. Karnofel then filed a second motion for relief from judgment with the Girard Municipal Court. *Karnofel v. Girard Police Dept.*, 11th Dist. No. 2009-T-0045, 2009-Ohio-4446, at ¶1. By a judgment entry filed on or about February 27, 2009, that court overruled the motion. *Id.* Ms. Karnofel appealed; and, August 28, 2009, we dismissed her appeal, finding, in substance, that her motion for relief from judgment merely sought to re-argue evidentiary matters disposed of by the trial court in prior judgment entries, which she either failed to appeal, or which she did appeal, unsuccessfully. See, e.g., *Karnofel*, 2009-Ohio-4446, at ¶9-15.

{¶6} The instant case commenced March 11, 2008, when Trumbull Memorial Hospital filed a complaint requesting the Trumbull County Court of Common Pleas declare that Ms. Karnofel is a vexatious litigator, pursuant to R.C. 2323.52, on the basis of her actions in Girard Municipal Court Case No. 2004 CVI 691. *Trumbull Mem. Hosp. v. Karnofel*, 11th Dist. No. 2008-T-0115, 2009-Ohio-1488, at ¶3. Motion practice ensued, including an attempted interlocutory appeal by Ms. Karnofel.¹ October 6, 2008,

1. See, e.g., *Trumbull Mem. Hosp. v. Karnofel*, 11th Dist. No. 2008-T-0037, 2008-Ohio-3060.

the trial court filed its judgment entry, granting Trumbull Memorial Hospital's motion for summary judgment, denying that of Ms. Karnofel, and declaring her a vexatious litigator. She appealed; and, March 31, 2009, we affirmed the judgment of the trial court. *Id.* at ¶29. In substance, we concluded that Ms. Karnofel could still not provide any evidence of the sort she needed to defeat the judgment granted to Trumbull Memorial Hospital in Girard Municipal Court Case No. 2004 CVI 691: i.e., expert medical testimony supporting her malpractice claim. *Trumbull Mem. Hosp.*, 2009-Ohio-1488 at ¶17. Consequently, we agreed with the trial court that her continuous prosecution of that claim constituted vexatious conduct under the statute. *Id.* at ¶18.

{¶7} May 8, 2009, pursuant to R.C. 2323.52(H), the trial court ordered its clerk to send to the Supreme Court of Ohio a certified copy of its October 6, 2008 judgment entry declaring Ms. Karnofel a vexatious litigator. May 15, 2009, Ms. Karnofel appealed; and, August 14, 2009, we dismissed the appeal. *Trumbull Mem. Hosp. v. Karnofel*, 11th Dist. No. 2009-T-0043, 2009-Ohio-4095, at ¶10. We noted that, as a vexatious litigator, Ms. Karnofel required leave of this court to proceed with her appeal, and that such leave may only be granted once a court of appeals determines there are reasonable grounds for the appeal, and it will not be an abuse of process for the appeal to proceed. *Id.* at ¶5, citing R.C. 2323.52(F)(2). We concluded there were no reasonable grounds for the appeal, as it was evident from her pleadings that Ms. Karnofel intended to use the appeal to contest her status as a vexatious litigator, which this court had affirmed on her direct appeal. *Trumbull Mem. Hosp.*, 2009-Ohio-4095, at ¶7-9.

{¶8} September 18, 2009, Ms. Karnofel moved the trial court for leave to proceed in filing a motion for relief from judgment regarding its declaration that she is a vexatious litigator. The trial court denied the motion by a judgment entry filed September 30, 2009. Ms. Karnofel noticed this appeal October 7, 2009, further applying to us for leave to proceed.

{¶9} A review of the applications for leave to proceed which Ms. Karnofel has filed with this court, as well as that filed with the trial court, indicates that Ms. Karnofel will not be able to raise any reasonable grounds for this appeal; and, consequently, that it would be an abuse of process for this court to allow the appeal to go forward. R.C. 2323.52(F)(2); *Trumbull Mem. Hosp.*, 2009-Ohio-4095 at ¶9. In her application to the trial court, Ms. Karnofel asserted: (1) that the trial court favored Trumbull Memorial Hospital in granting it summary judgment and declaring her a vexatious litigator since it was represented by counsel, whereas she was proceeding pro se; and, (2) that the trial court ignored the evidence attached to her motion for summary judgment. In her application to this court, Ms. Karnofel again argues that the trial court was prejudiced against her as a pro se litigant. She further argues that the trial court was required to grant her a hearing.

{¶10} We reject all these arguments. They are the self-same arguments she raised in *Trumbull Mem. Hosp.*, 2009-Ohio-4095 at ¶7, which we found lacking in merit. *Id.* at ¶8. A motion for relief from judgment, Civ.R. 60, cannot be used as a substitute for appeal. *Karnofel v. Girard Police Dept.*, 2009-Ohio-4446 at ¶10. However, as we found in *Trumbull Mem. Hosp.*, 2009-Ohio-4095 at ¶8, these arguments are designed to re-litigate the merits of the trial court's October 6, 2008 determination that Ms. Karnofel

is a vexatious litigator – a determination which we fully reviewed, and affirmed, on her direct appeal. It is res judicata. Id.

{¶11} Ms. Karnofel's applications for leave to proceed are overruled. The appeal is hereby dismissed.

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

MARY JANE TRAPP, P.J.,

DIANE V. GRENDALL, J.,

concur.