

**NOTICE
COURT OF COMMON PLEAS
CIVIL DIVISION
COUNTY OF SUMMIT
STATE OF OHIO**

Case No: CV-2006-05-3153 7

THE STATE OF OHIO
SUMMIT COUNTY, SS.

BUOSCIO, SAMUEL L.
C/O RICHLAND CORRT. INST. INM
ATE #243-856
1001 OLIVEBURG RD.
MANSFIELD, OH 449018107

VS

OBORN, BRIAN
1365 KRUMROY ROAD
AKRON, OH 44306

To the following:

OHIO SUPREME COURT
CLERK OF COURTS
30 EAST BROAD STREET
COLUMBUS, OHIO 43215

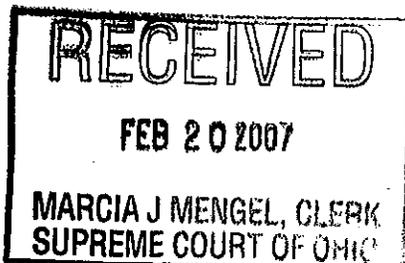
You are hereby notified that the following copy(s) have been filed with the SUMMIT COUNTY CLERK OF COURTS OFFICE:

ORDER NAMING SAMUEL BUOSCIO A VEXATIOUS LITIGATOR.

Given under my hand and seal of the said Court, this February 8, 2007 date.

Daniel M. Horrigan, CLERK OF COMMON PLEAS COURT, CIVIL DIVISION.

By: s/ M. Randles Deputy Clerk



2006

DIANA ZALESKI
2006 DEC 11 PM 1:46
SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

SAMUEL BUOSCIO)	CASE NO. CV 2006-05-3153
)	
Plaintiff,)	JUDGE STORMER
)	
v.)	
)	
BRIAN OBORN)	<u>Order Granting Default</u>
)	<u>Judgment</u>
Defendant.)	(final and appealable)
)	

This matter is before the Court upon Defendant, Brian Oborn's, Application for Default Judgment. Plaintiff, Samuel Buoscio did not reply.

On October 13, 2006, in addition to his Answer to the Complaint, Oborn filed a counter-claim against Buoscio and requested that this Court declare Buoscio a vexatious litigator. Buoscio has not answered or otherwise defended Oborn's claim against him.

On December 4, 2006, Buoscio filed a "Motion to Dismiss Pursuant to Ohio Civil Rule 41(A)" on the basis that "the wrong party is named in the complaint."

Pursuant to Civ. R. 41(A)(1):

a plaintiff, without order of the court, may dismiss all claims asserted by that plaintiff against a defendant by . . . filing a notice of dismissal at any time before the commencement of trial unless a counterclaim which cannot remain pending for independent adjudication by the court has been served by that defendant.

In the case before this Court, Plaintiff Samuel Buscio (Buoscio) has voluntarily dismissed his claims against Defendant, Brian Oborn (Oborn). However, on October 13, 2006, Oborn properly and validly asserted a counterclaim against Buoscio. Because a

counterclaim has its own jurisdictional basis, it remains pending for independent adjudication by the court. *Abbyshire Constr. Co. v. Ohio Civil Rights Commission* (1974), 39 Ohio App. 2d 125 (Ohio App. 8 Dist.) (decided under former analogous section). Accordingly, Buoscio's dismissal does not extinguish Oborn's Counterclaim and this Court retains jurisdiction to consider Oborn's November 15, 2006, Application for Default Judgment.

This case arises out of Buoscio's involvement with, and subsequent incarceration for, the 1991 death of Oborn's mother, Karol S. Oborn. In a 1992 wrongful death civil suit in Summit County, a \$950,000 judgment was rendered against Buoscio, of which Ms. Osborn's estate has received approximately \$100,000. The following year, the Mahoning County Probate Court ordered that all of Buoscio's assets be turned over to Ms. Oborn's estate and applied against the judgment owed by Buoscio. Since then, Buoscio has filed suit after suit in numerous courts and against dozens of individuals and entities alleging that monies are owed to him. In Summit County alone (common pleas, municipal, and appellate courts), Buoscio has filed no less than twenty suits and the present action is no different.

In fact, the case currently before this court is identical to a 2005 action Buoscio filed in Summit County: *Buoscio v Spade*, CV 2005-11-6575. The 2005 case was dismissed for want of prosecution. Here, as in the 2005 case, Buoscio alleges that the 1992 wrongful death judgment should be dismissed pursuant to a 1993 decision by the Mahoning County Probate Court. This Court points out that Buoscio's request to dismiss the 1992 Summit County judgment is untimely. Furthermore, nothing in the Mahoning County Probate Court Judgment Entry indicates that this was a final settlement for the Summit County wrongful death judgment.

In his counter-claim, Oborn requests this Court to declare Buoscio a vexatious litigator pursuant to R.C. §2323.52 and that Buoscio be enjoined indefinitely from instituting, pro se, any legal proceeding in the court of common pleas, municipal court, county court or court of claims without first obtaining leave from the court. Oborn asserts that Buoscio, acting pro se, has repeatedly engaged in litigious activities against Oborn and others involved in the death of his mother. Buoscio has been declared a vexatious litigator in Franklin County, Ohio, where he is barred from continuing or instituting any further legal proceedings against the named defendant. *Buoscio v. Jackson Nat'l Life Ins. Co., Inc.*; Case No. 03 CVH-12-13184.

R.C. §2323.52, Ohio's vexatious litigator statute, provides as follows:

- (A) As used in this section:
- (1) "Conduct" has the same meaning as in section R.C. 2323.51.
 - (2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:
 - (a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.
 - (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.
 - (c) The conduct is imposed solely for delay.
 - (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, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.
- (B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil

action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

(D) (1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
- (b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;
- (c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.

R.C. §2323.52 grants authority to the court of common pleas to order a vexatious litigator to obtain its leave before proceeding in the court of claims, a court of common pleas, municipal court, or county court. A court of common pleas has no authority under the Statute, or pursuant to its own inherent powers to prevent abuse of the judicial process or to restrict the activities of a vexatious litigator in courts other than these specifically enumerated Ohio trial courts. *Mayer v. Bristow* (2000), 91 Ohio St. 3d 3, syllabus. A court's finding that an individual is a vexatious litigator may be based upon either a single civil action or multiple civil actions. *Buoscio v. Macejko*, 2003 Ohio 689, *13-14 (Ohio App. 7 Dist.).

In *Mayer, supra*, the Ohio Supreme Court discussed the vexatious litigator statute's purpose and stated:

The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources - resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.

Id., (quoting *Central State Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41 (Ohio App. 10 Dist.)). The *Mayer* court upheld the statute's constitutionality and stated that it "establishes a screening mechanism under which the vexatious litigator can petition the declaring court, on a case-by-case basis, for a determination of whether any proposed action is abusive or groundless." *Id.*

This Court has reviewed the pleadings submitted by both Oborn and Buoscio in this case. A review of the pleadings establishes that Buoscio repeatedly files the same or similar pleadings against individuals and entities connected to Karol Oborn's death, despite previous judicial opinions stating that the cause of action or relief requested do not state a claim or have no basis in law or fact. In fact, the current case is just one of eleven Buoscio has filed in Summit County Court of Common Pleas.

This Court also notes that Buoscio has initiated cases not only in Summit County Common Pleas Court, but also the Ninth District Court of Appeals, the Supreme Court of Ohio, as well as numerous cases in Franklin County, Mahoning County, Cuyahoga County, and Richland County; all pertaining to the same issue. It appears that all of these actions were instituted based on claims arising out of the monetary judgment against him for the wrongful death of Karol S. Oborn.

A review of Buoscio's pleadings in the above-mentioned cases reveals that Buoscio's pleadings are a compilation of rambling briefs that do little, if anything, to assist the Courts that are confronted with them. Buoscio fails to put forth a single good faith argument to this Court for the extension, modification or reversal of any existing Ohio law that would warrant the filing of the instant claim. Defendant Oborn was forced to retain legal counsel and expend finances and time in defending a lawsuit that clearly has no basis for recovery under Ohio law. In fact, the sheer volume of documents filed by Buoscio expends an enormous amount of judicial time and resources as each filing must be read and ruled on regardless of the fact that they are completely without merit. In the case at bar, Buoscio has filed numerous petitions, motions and demands. Although the vast majority of Buoscio's cases end up being dismissed, it is only after a great deal of time and effort have been expended by opposing counsel and the Court.

Additionally, this Court takes judicial notice of the long list of cases provided by Oborn in his Counterclaim exhibiting Buoscio's long history of unwarranted *pro se* litigation, merely to support the fact that Buoscio is quite familiar with the legal system. Although Buoscio is *pro se* in this action, he cannot assert that he is not familiar with Ohio's legal system requirements, nor his responsibility to not pursue frivolous actions, such as this one, as instructed to him in other courts.

In light of the foregoing, Plaintiff Samuel Buoscio is hereby declared to be a vexatious litigator. Samuel Buoscio is hereby prohibited from doing all of the following without first obtaining leave of the court to proceed:

1. Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court or county court;

2. Continuing any legal proceedings that the Plaintiff had instituted in the court of claims or in a court of common pleas, municipal court or county court prior to the entry of this order; and
3. Making any application, other than an application for leave to proceed under R.C. §2323.52(F) in any legal proceedings instituted by Plaintiff or another person in the court of claims, or in a court of common pleas, municipal court or county court.

Upon consideration the Court finds said motion well taken. Buoscio was duly served with summons on October 13, 2006 and has not answered or otherwise defended the action brought by Oborn. Therefore, Defendant Oborn's Application for Default Judgment is GRANTED. Each and every filing by Buoscio is hereby expressly and summarily OVERRULED AND DENIED. This is a final and appealable order. There is no just cause for delay.

IT IS SO ORDERED.



JUDGE ELINORE MARSH STORMER

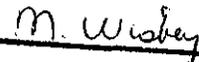
Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this judgment and its date of entry upon the journal.



Judge Elinore Marsh Stormer

cc: Attorney Emily Hete
Samuel Buoscio

I certify this to be a true copy of the original
Daniel M. Horrigan, Clerk of Courts.



Deputy