

IN THE COURT OF COMMON PLEAS
STARK COUNTY, OHIO

LYNN M. TOWNRO
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STARK COUNTY, OHIO
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KYLE L. STONE,)	CASE NO. 2024CV00896
)	
Plaintiff.)	JUDGE KRISTIN G. FARMER
)	
vs.)	JUDGMENT ENTRY GRANTING
)	PLAINTIFF'S MOTION FOR
KIMANI WARE,)	SUUMARY JUDGMENT AND
)	DECLARING DEFENDANT A
Defendant.)	VEXATIOUS LITIGATOR
)	PURSUANT TO R.C. 2323.52

This matter is before the Court on Cross-Motions for Summary Judgment. Defendant filed a Motion for Summary Judgment on October 1, 2024.¹ Plaintiff filed a Response in Opposition on October 8, 2024. Plaintiff filed a Motion for Summary Judgment on October 16, 2024. Plaintiff filed a Notice of Supplementation on October 24, 2024. Defendant filed a Reply to Plaintiff's Motion for Summary Judgment on November 8, 2024.

Plaintiff's Complaint and Allegations Regarding Defendant's Conduct

Plaintiff's Complaint moves the Court to designate the Defendant as a vexatious litigator pursuant to R.C. 2323.52. In his Complaint, Plaintiff alleges the following, in relevant part,

8. Since 2018, Defendant has filed approximately 43 mandamus or other civil actions related to public records requests throughout the state of Ohio.

9. Plaintiff has been a party or statutory counsel in seven of these actions. Fifth District Court of Appeals case numbers, 2019CA0003, 2019CA00079, 2021CA00042, and 2023CA00066, Ohio Supreme Court case numbers 2019-0824, 2020-0043, and 2023-1343.

¹ The Court finds that the Defendant has not supported his motion for summary judgment with any evidence pursuant to Civ. R. 56, other than his self-serving affidavit.

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12. The predicate action for this complaint is case number 2023CA00066 which was filed by Defendant in the Fifth District Court of Appeals.

14. In 2023CA00066, Defendant filed an original action in mandamus alleging that he made a public record request that was received by Plaintiff on April 11, 2022 with a USPS certified mail tracking number of 70012510000303219431.

15. Plaintiff received a certified mail envelope from Defendant on April 11, 2022 with the tracking number 70012510000303219431.

16. This envelope was opened by Attorney Dave Deibel in the presence of Attorney Aaron Violand due to an email that had been circulated on February 15, 2022 through Plaintiff's office advising that any mail from Defendant is not to be opened and that Attorney Diebel is to be contacted upon receipt of said mail. (Plaintiff's Exhibit 1).

17. The envelope did not contain any request(s) for public records.

18. The only document enclosed in this envelope was a copy of a filing that Plaintiff had made in a prior case involving Defendant.

20. Defendant also utilized this tactic when filing a prior mandamus action against the Stark County Prosecutor in case number 2021CA00042 which was filed by Defendant in the Fifth District Court of Appeals on April 14, 2021.

21. Defendant alleged that he had sent Plaintiff public records requests on May 18, 2020.

22. Plaintiff has no record of having received these requests and did not become aware of them until being served with the writ on April 20, 2021.

23. The Court granted summary judgment in favor of Plaintiff and held that "the two public record requests attached as exhibits to Ware's Complaint for Writ of Mandamus could not have been in the certified mail envelope he sent to the prosecutor's office." *State ex rel. Ware v. Stone*, 5th Distr. Stark No. 2021CA00042, 2022-Ohio-1151, ¶31.

24. Defendant's practice of creating certified mail "paper trails" to use

in future fraudulent complaints for writs of mandamus is not limited to Stark County.

(Plaintiff's Complaint filed on May 7, 2024).

In 2023CA00066, the Fifth District Court of Appeals denied the writ and Defendant's request for statutory damages and court costs. (Plaintiff's Exhibit 30). The decision of the Fifth District Court of Appeals was affirmed by the Ohio Supreme Court.

All of the Fifth District Court of Appeals cases have been dismissed without any relief afforded to the Defendant. Additionally, Defendant has been declared to be a vexation litigator by the Ohio Supreme Court. (See, *State ex rel. Ware v. Viglucci*, 175 Ohio St. 3d 1489 (2024), 2024-Ohio-4997, and *State ex rel. Ware v. Viglucci*, 2024-Ohio-5492).

In previous filings, both the Fifth District Court of Appeals and the Supreme Court of Ohio have made findings of "frivolous conduct" by the Defendant and both have assessed sanctions and awarded attorney fees to Plaintiff. (See, Plaintiff's Exhibit 31, and *State ex rel. Ware v. Viglucci*, 2024-Ohio-5492).

Plaintiff's allegation that the Defendant has engaged in a pattern of frivolous conduct by creating certified mail "paper trails" to use in future fraudulent complaints for writs of mandamus is not just limited to Stark County, but has been initiated in other courts in other counties, including but not limited to Summit County and Portage County. (See, Affidavit of Marrett Hanna, Plaintiff's Exhibit 6, and Affidavit of Jill Fankhauser, Plaintiff's Exhibit 7).²

² The number of cases and Courts involving the Defendant's frivolous conduct is so voluminous that the Court adopts, as if fully rewritten herein, those portions of the State of Ohio's Motion for Summary Judgment, wherein the Plaintiff sets forth, in detail, the "Additional Actions Where No Request Was Actually Sent" and "Actions Where Defendant Fraudulently Claims Additional Pages of Requests Were Sent" at pages 4-13.

Standard for Pro Se Litigants is the same as Attorneys³

“While one has the right to represent himself or herself and one may proceed into litigation as a *pro se* litigant, the *pro se* litigant is to be treated the same as one trained in the law as far as the requirement to follow procedural law and the adherence to court rules. If the courts treat *pro se* litigants differently, the court begins to depart from its duty of impartiality and prejudices the handling of the case as it relates to other litigants represented by counsel.” *State v. Pryor*, 2007 WL 2372361, 2007-Ohio-4275 (Ohio App. 10 Dist.).

“*Pro se* civil litigants are bound by the same rules and procedures as those litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own mistakes and errors.” *Holbein v. Genesis Healthcare System*, 2007 WL 3026954 (Ohio App. 5 Dist.) citing, *Meyers v. First Ntl. Bank of Cincinnati* (1981), 3 Ohio App.3d 209, 201.

Summary Judgment Standard

A non-oral hearing was held on the cross-motions for summary judgment. Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). The moving party must initially inform the trial court of the basis for its motion and identify those portions of the record which demonstrate the absence of a genuine issue of material fact. *Celotex v. Catrett* (1986), 477 U.S. 317, citing with approval in *Wing v. Anchor Media Ltd. of Texas* (1991), 59 Ohio St.3d 108. See, also, *Vahila v. Hall* (1997), 77 Ohio St.3d 421, 429; *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292.

³ Defendant is a Pro Se Litigant who is an inmate housed in the Richland County Correctional Institution and is serving a term of forty-five years in prison after being found guilty by a jury of one count of attempted murder, three counts of kidnapping, two counts of rape, one count of gross sexual imposition, one count of attempted rape, and one count of felonious assault in *State v. Ware*, Summit County Common Pleas Court, Case No. CR-2003-3491.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth the specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Civ.R. 56(E).

Once the moving party has satisfied his initial burden, the nonmoving party must "set forth specific facts showing that there is a genuine issue for trial and, if the nonmovant does not so respond, summary judgment, if appropriate, shall be entered against the nonmoving party." *Vahila* at 1171, quoting *Dresher* at 293.

Vexatious Litigator Standard

Pursuant to R.C. 2323.52 "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." (R.C. 2323.52(A)(2)).

The statute defines a "vexatious litigator" as "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." R.C. 2323.52(A)(3).

"Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system, threatens the integrity of the judiciary,

and casts a shadow upon the administration of justice. Thus, the people, through their representatives, have a legitimate, indeed compelling, interest in curbing the illegitimate activities of vexatious litigators.” *Mayer v. Bristow*, 2000-Ohio-109, 91 Ohio St. 3d 3, 13.

Based upon the facts set forth in Plaintiff’s Complaint, Plaintiff’s briefs, and this judgment entry, the Court finds that the Defendant has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions” pursuant to R.C. 2323.52.

The Court further finds that this conduct has served “merely to harass or maliciously injure” another party and was not “warranted under existing law”.

The Court finds that the Defendant’s conduct of filing frivolous actions clearly satisfies the definition of “Vexatious Litigator” pursuant to R.C. 2323.52, and hereby declares the Defendant to be a vexatious litigator.

The Court further finds that without the imposition of the sanction, as set forth in R.C. 2323.52 (D)(1), he will continue to file frivolous actions.

As such, the Court Orders that the Defendant is prohibited from doing any of the following, without first obtaining leave of 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;

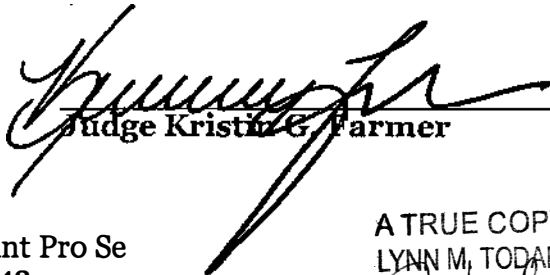
(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of R.C. 2323.52.

Defendant is also prohibited pursuant to R.C. 2323.52(D)(3) from instituting legal proceedings in a court of appeals, continuing any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order, or making any application, other than the application for leave to proceed allowed by R.C. 2323.52(F)(2), in any legal proceedings instituted by the vexatious litigator or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to R.C. 2323.52(F)(2).

Conclusion

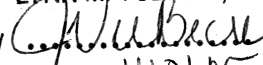
Upon review, and for the reasons set forth above, as well as those contained in the Plaintiff's briefs, the Court finds that there are no genuine issues of material fact and that the Plaintiff is entitled to judgment as a matter of law. Accordingly, Plaintiff's motion for summary judgment is **GRANTED**. Defendant's motion for summary judgment is **DENIED**.

IT IS SO ORDERED.



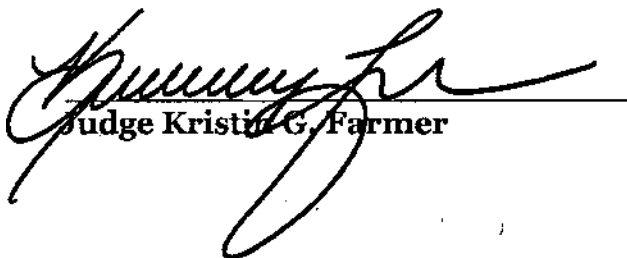
Judge Kristin G. Farmer

Copies: Aaron J. Violand, Esq.
Kimani Ware, Defendant Pro Se
Inmate #A470743
Richland Correctional Institution
1001 Olivesburg Rd.
P.O. Box 8107
Mansfield, OH 44905

A TRUE COPY TESTE:
LYNN M. TODARO, CLERK
By  Deputy
Date11.10.15.....

**NOTICE TO THE CLERK:
FINAL APPEALABLE ORDER
Case No. 2024CV00896**

IT IS HEREBY ORDERED that notice and a copy of the foregoing Judgment Entry shall be served on all parties of record within three (3) days after docketing of this Entry and the service shall be noted on the docket.



Judge Kristin G. Farmer

IN THE COURT OF COMMON PLEAS, STARK COUNTY, OHIO

**STARK COUNTY CLERK OF COURTS
NOTICE OF JUDGMENT**

2024CV00896

STARK COUNTY PROSECUTOR VS KIMANI WARE

INDIVIDUALS LISTED BELOW WERE NOTIFIED THAT AN ENTRY WHICH MAY BE A FINAL APPEALABLE ORDER HAS BEEN FILED WITH THE CLERK OF THE COMMON PLEAS COURT ON Dec 11 2024.

Name	Address
AARON JORDAN VIOLAND	110 CENTRAL PLAZA S SUITE 51- CANTON, OH 44702
KIMANI WARE	RICHLAND CORRECTIONAL INSTITUTION P.O. BOX 8107 MANSFIELD, OH 44
KIMANI WARE	RICHLAND CORRECTIONAL INSTITUTION 1001 OLIVESBURG RD, P O BOX 8