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LINA C. STALEY-BURLEY
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ALLEN COUNTY, OHIO

IN THE COURT OF COMMON PLEAS OF ALLEN COUNTY, OHIO

CRAIG L. KOEHLINGER,

Plaintiff[s]

-v-

NICHOLAS J. KINSTLE,

Defendant[s]

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CASE NO. CV2008 1736

**JUDGMENT ENTRY
Civ. R. 56**

This matter comes on for consideration of the plaintiff's motion for summary judgment filed on July 7, 1009 defendant's response filed on September 2, 2009. An oral hearing was held on September 2, 2009. Attorney Lawrence A. Huffman appeared on behalf of plaintiffs and argued in favor of the motion for summary judgment. Defendant did not appear at the oral hearing.

This case originated when the plaintiff filed a complaint against defendant, Kinstle, seeking a determination from the Court that Kinstle was a vexatious litigator. Plaintiff claimed he was a defendant in a case (Allen County Case No. CV 2008 0788) in which Kinstle made allegations against him that were substantially the same as allegations made against plaintiff in

288

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a previously disposed of case (CV 2005 0543). Kinstle filed an answer generally denying all of the allegations of the complaint.

A person who has defended against habitual and persistent vexatious conduct may commence a civil action to have an individual declared a vexatious litigator. *Lasson v. Coleman*, 2nd Dist. No. 21983, 2008 -Ohio-4140

Under Civ.R. 56, summary judgment is appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can only reach one conclusion which is adverse to the nonmoving party. *Holliman v. Allstate Ins. Co.* (1999), 86 Ohio St.3d 414, 715 N.E.2d 532; *Temple v. Wean United, Inc.*(1977), 50 Ohio St.2d 317, 327, 4 O.O.3d 466, 471-472, 364 N.E.2d 267, 273-274. Civ.R. 56 places upon the moving party the initial burden of setting forth specific facts that demonstrate no issue of material fact exists and the moving party is entitled to judgment as a matter of law. *Dresher v. Burt* (1996), 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264, 273-274. If the movant fails to meet this burden, summary judgment is not appropriate. *Id.* at 293, 662 N.E.2d at 274. If the movant does meet this burden, summary judgment will be appropriate only if the nonmovant fails to establish the existence of a genuine issue of material fact. *Id.*

A vexatious litigator is defined in R.C. 2323.52(A)(3) 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 common pleas, municipal court, or county court * * *. The Ohio Supreme Court has observed that the purpose of R.C. 2323.52 is 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.* (Emphasis added.) *Mayer v. Bristow* (2000), 91 Ohio St.3d 3, 2000 -Ohio- 109, quoting *Cent. Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41, 50. As the italicized language makes clear, a person filing a civil lawsuit in an Ohio court may be declared a vexatious litigator so long as that person has used the courts of this state to engage in vexatious conduct as defined in R.C. 2323.52(A)(2). It is the nature of the conduct, not the number of actions that determines whether a person is a vexatious litigator. *Borger v. McErlane*, 1st Dist. No. C-010262, 2001 -Ohio- 4030. Under R.C. 2323.52(A)(3), a person's behavior in prior civil actions can also form the basis for declaring him a vexatious litigator. Declaring a plaintiff to be a vexatious litigator is "an extreme measure" that should be granted only "when there is no nexus" between "the filings made by the plaintiff[] and [his or her] "intended claims." *McClure v. Fischer Attached Homes*, 145 Ohio Misc.2d 38, 2007-Ohio-7259 at ¶ 33.

The Ohio Supreme Court has said of vexatious litigation:

"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."

Mayer v. Bristow, supra, quoting *Cent. Ohio Transit Auth. v. Timson* (1998), 132 Ohio App.3d 41, 50, 724 N.E.2d 458. The vexatious litigator statute was designed to stop litigators who often "use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets.... 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*, 91 Ohio St.3d at 13.

"[S]eparate, repetitive actions are not necessary for a vexatious litigator finding, and such finding can be based upon actions in a single case." *Roo v. Sain*, Franklin App. No. 04AP-881, 2005-Ohio-2436, 2005 WL 1177940, at ¶ 18, citing *Farley v. Farley*, Franklin App. No. 02AP-1046, 2003-Ohio-3185, at ¶ 48. A person may be declared a vexatious litigator as long as the person uses the courts to engage in vexatious conduct. *Borger*, supra. The purpose of the vexatious litigator statute is to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds for doing so. *Mayer v. Bristow*, supra.

Plaintiff attached a copy of the docket of this Court, as of December 11, 2008, to the instant complaint. The docket shows that Kinstle has filed, as a plaintiff, at least twelve separate lawsuits in Allen County since 2001. He has been named as a defendant in at least a dozen other cases. Plaintiff

has submitted an affidavit of Attorney Huffman, with attached and incorporated documents, in support of his motion for summary judgment. Plaintiff points specifically to Case No. CV 2008 0788, in which plaintiff herein was named a defendant.

This Court takes judicial notice of the docket of this Court. It is a well-settled axiom of law that a trial court may take judicial notice of its own docket pursuant to Evid.R. 201(B). See *Indus. Risk Insurers v. Lorenz Equip. Co.*, 69 Ohio St.3d 576, 1994-Ohio-442; *State v. Washington* (Aug. 27, 1987), 8th Dist. Nos. 52676, 52677, 52678. See also, *Kramer v. Time Warner Inc.* (C.A.2, 1991), 937 F.2d 767, 774, citing *U.S. v. Walters* (3rd Cir.1975), 510 F.2d 887, 890 n. 4 ("courts routinely take judicial notice of documents filed in other courts"); accord *State ex rel. Neff v. Corrigan*, 75 Ohio St.3d 12, 1996-Ohio-231. Plaintiff also points to evidence of other litigation in which Kinstle has participated (Union County Case No. 2006 CV 0524).

This Court cannot declare Kinstle a vexatious litigant solely because he filed lawsuits that plaintiff might consider frivolous. Plaintiff must prove that there is no genuine issue of material fact as to whether the requirements in R.C. 2323.51(A)(2) have been met. *McClure v. Fischer Attached Homes*, 145 Ohio Misc.2d 38, 2007-Ohio-7259 at ¶ 33.

R.C. 2323.52(A)(2) defines vexatious conduct to mean 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."

The evidence pointed to by plaintiff demonstrates there is no genuine issue of fact that plaintiff herein was named as a defendant by Kinstle in CV 2005 0543. Plaintiff was also named as a defendant by Kinstle in Allen County Case No. CV 2008 0788, along with at least seven other defendants. Case No. CV 2008 0788 was dismissed on May 18, 2009 after Kinstle was found in contempt for "continually interrupt[ing] the proceedings ...so as to obstruct the administration of justice by delaying, hindering or attempting to influence the outcome..." In his entry in CV 2008 0788, Judge Warren found that Kinstle "proceeded to make statements in front of the jury relative to the fact that this isn't a real court and that [Judge Warren] had no authority to proceed." In dismissing that case, Judge Warren found that Kinstle's conduct was "so irresponsible, contumacious, obstinate or dilatory as to provide substantial grounds for dismissal."

The evidence demonstrates clearly and convincingly that Kinstle has obviously used the courts to engage in vexatious conduct and to delay ultimate resolution in the legal proceedings in which he is involved. It has been shown, clearly and convincingly, that Kinstle's legal proceedings clog the court dockets, result in increased costs, and oftentimes waste judicial resources-resources that are supported by the taxpayers of this state. In the instant case, and all of his previous legal filings, Kinstle has tried to avoid the authority of the courts by referring to himself as a "sovereign

citizen" of the "State of Ohio Republic."¹ Even in the instant matter, he refers to this Court as an "admiralty" court and this judge as a "Maritime Judge." Kinstle has avoided final resolution of his cases, has intimidated public officials, sued a judge, and has continually refused to recognize the legal authority of the court system. The evidence demonstrates that Kinstle's conduct obviously serves to harass, is not warranted under existing law and is imposed solely for delay.

Kinstle presented his own affidavit in opposition to the motion for summary judgment. In his affidavit, Kinstle claims that orders issued in other cases, such as Allen County Case No. CV 2008 1032, are "incompetent." He also goes into depth to set forth his claims and argue the merits of his claims in other pending lawsuits involving a real estate mortgage (which he refers to as a "death grip"). He refers several times to his claimed understanding of the system of commerce and money in the United States, but he has failed to meet his reciprocal duty to establish the existence of a genuine issue of material fact regarding the nature of his conduct as a litigator.

R.C. 2323.52 was not designed to prevent litigators from proceedings on legitimate claims, but instead establishes a screening mechanism under which the vexatious litigator can petition the court for a determination of

¹ Kinstle's own affidavit, attached to his response to the motion for summary judgment is captioned in the "State of Ohio Republic." Ohio has never existed as an independent nation (unlike, for instance, Texas before statehood), and defendant's references to an "Ohio Republic" have no basis in law or fact. Litigants in other courts have argued that Ohio is not a state, or that it was never properly admitted to the Union. These assertions are entirely groundless. *Lewingdon v. Celeste* (C.A.6, 1986), 810 F.2d 201; *Sisk v. C.I.R.* (C.A.6, 1986), 791 F.2d 58; *Holton v. Celeste* (C.A.6, 1986), 786 F.2d 1164; *Knoblauch v. C.I.R.* (C.A.5, 1984), 749 F.2d 200, certiorari denied (1985), 474 U.S. 830, 106 S.Ct. 95, 88 L.Ed.2d 78. Ohio is unquestionably a state, and part of the Union.

whether the proposed claim is legitimate. *Mayer, supra*, at 14. R.C. 2323.52 was designed to address situations such as the one at hand. It is patently unfair and unreasonable that any person should be continually forced to defend against, and that the court system should be forced to handle, the same unwarranted complaints that cannot be supported by any recognizable good-faith argument.

Therefore, it is ORDERED, ADJUDGED and DECREED that plaintiff's motion for summary judgment is GRANTED and defendant Nicholas J. Kinstle is declared to be a vexatious litigator.

Pursuant to R.C. 2323.52 it is further ORDERED that:

Kinstle is **prohibited** from doing any of the following without first obtaining the leave of that court to proceed:

- (a) Instituting legal proceedings in a court of common pleas;
- (b) Continuing any legal proceedings that he has instituted in any common pleas court prior to the entry of this order;
- (c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by him or another person in any common pleas court.

This order shall remain in force indefinitely.

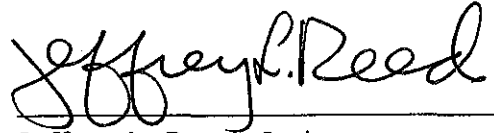
It is further ORDERED that the clerk of the court shall send a certified copy of the order to the Ohio Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerks of the courts of common pleas refusing to accept pleadings or other papers submitted for filing by Kinstle unless he obtains leave to proceed under R.C. 2323.52.

It is further ORDERED that defendant Kinstle shall pay all the Court costs in this case.

Pursuant to Civ. R. 54, this is a final judgment as to one or more but fewer than all of the claims or parties, so the Court expressly determines that there is no just reason for delay.

It is so ORDERED.

September 8, 2009


Jeffrey L. Reed, Judge

The Clerk of this Court shall forward a file stamped copy of this Judgement Entry by regular mail to each attorney of record and each party not represented by counsel. The fact of mailing shall be entered on the docket and charged as costs.

THE STATE OF OHIO }
Allen County } SS CERTIFICATE OF COPY

I, Gina C. Staley-Burley, Clerk of the Courts within and for the aforesaid County and State, do hereby certify that the foregoing is a true and correct copy of the original document now on file in said Clerk's office.

IN WITNESS WHEREOF I have here unto set my hand and affixed the seal of said Court of Lima, Ohio this day of September A.D. 2009

(SEAL)

GINA C. STALEY-BURLEY

Clerk
By Jessie Gada Deputy