

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
CIVIL DIVISION

RRL HOLDING COMPANY OF OHIO,
LLC, ET AL.,

Plaintiffs,

v.

MERRILEE STEWART,

Defendant.

CASE NO. 18CV-7212

JUDGE KIM BROWN

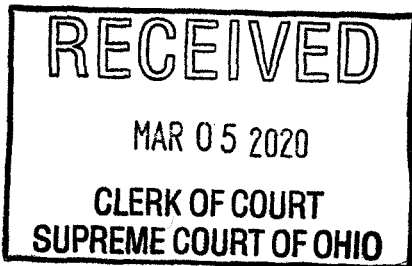
JUDGMENT ENTRY
GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
FILED NOVEMBER 7, 2019

Rendered this 20th day of December, 2019

This matter is before the Court upon Plaintiffs, RRL Holding Company of Ohio, LLC and Firefly Agency, LLC's (collectively "Firefly") motion for summary judgment filed November 7, 2019. Defendant, Merrilee Stewart ("Stewart") filed her opposition memorandum on November 21, 2019. Firefly filed its reply memorandum on November 25, 2019. On December 5, 2019, this Court issued an order to both parties to supplement their arguments with evidence as required under Civ.R. 56(E). Only Firefly complied with the order. The motion is now ripe for the Court's consideration.

INTRODUCTION

In this case, Firefly seeks to declare Stewart a vexatious litigator under R.C. 2323.52. The parties have been engaged in long-drawn-out litigation since Stewart was removed as President of Firefly/IHT and as a member of RRL Holding in late 2014. Firefly, through this action, seeks to curtail anymore litigation by having Stewart declared a vexatious litigator. The procedural history



of this case is detailed in the Court's decision filed November 12, 2019, and will not be repeated here.

FINDINGS OF FACT

The Court finds the following facts to be material and undisputed:

1. Stewart was removed as President of Firefly/IHT and as a member of RRL Holding Company of Ohio ("RRL Holding"). *Kemp Affidavit*, Ex. 1. After that, an action in Franklin County Common Pleas Court was filed and designated Case No. 2015-CV-1842 ("Initial case"). *Id.* On November 10, 2015, the Initial case was stayed and ordered to arbitration. *Id.* A three-member arbitration panel found the removal of Stewart to be lawful and consistent with the parties' governing documents. *Id.*
2. After the arbitration panel's decision, Firefly had to move to compel enforcement of the arbitration award in the Initial case because Stewart refused to comply. *Id.*, Ex. 2.
3. On January 7, 2018, Stewart filed a motion to vacate the arbitration award. *Id.*, Ex. 3. A week later she filed a notice of appeal of the trial court's November 10, 2015 order to stay the case pending arbitration. *Id.* Ex. 4. That appeal was dismissed as untimely. *Id.*, Ex. 5.
4. On February 5, 2018, the trial court entered judgment confirming the arbitration award. *Id.*, Ex. 6. Stewart appealed that decision. *Id.*, Ex. 7. The court of appeals affirmed. *Id.*, Ex. 9. Undeterred, Stewart sought jurisdiction in the Supreme Court of Ohio. *Id.* Ex 10. The Supreme Court declined jurisdiction. Still undeterred, Stewart moved the Supreme Court to reconsider that decision. *Id.* Ex. 11. The Supreme Court again declined.

5. After Stewart exhausted her appeals, she then refused to comply with the trial court's judgment affirming the arbitration award. This refusal resulted in multiple motions for sanctions, magistrate hearings on those motions, magistrate decisions awarding sanctions, objections to the magistrate decisions, appeals, and appeals being dismissed. *Id.* Ex. 15, 16, 17, 18, 21, 24, 28, 30, 31,32, and, 33.
6. Stewart's conduct has spilled into Wood County Common Pleas Court. *Id.*, Ex. 34. That case is stayed pending the outcome of the Initial case. *Id.*, Ex. 35. Stewart appealed that stay and it was dismissed by the Sixth District Court of Appeals. *Id.*, Ex. 36 and 37.
7. In this action, Stewart filed a counterclaim and third-party complaint, and then improperly removed to federal court. *Id.*, Ex. 43. The case was later remanded. *Id.*, Ex. 44.
8. Another notable act, at one point in the Initial case Stewart moved for an advancement of her fees. *Id.* Ex. 27. The motion was denied. *Id.*, Ex. 29.
9. Examples of Stewart's conduct beyond the Franklin County Common Pleas Court include: filing an ERISA claim in federal court repeating her theories about Firefly raised in Franklin County Common Pleas Court (*Motion*, Ex. F.); and filing a complaint with the Ohio Civil Rights Commission which in response issued a finding of no probable cause *Id.*, Ex. J.

LAW AND ANALYSIS

Motion for Summary Judgment

To prevail upon a motion for summary judgment, the moving party must inform the court of the basis for the motion and identify those portions of the record that demonstrate the absence of a genuine issue of material fact. Ohio Supreme Court precedent explains:

the movant must be able to point to evidentiary materials of the type listed in Civ.R. 56(C) that a court is to consider in rendering summary judgment These evidentiary materials must show that there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. . . . If the moving party fails to satisfy its initial burden, the motion for summary judgment must be denied.

Dresher v. Burt, 75 Ohio St. 3d 280, 292-93, 662 N.E.2d 264 (1996).

Additionally, it is well-established that the party responding to a motion for summary judgment has some burden to provide the Court with evidence as to their reasons for opposition. “A motion for summary judgment forces the nonmoving party to produce evidence on any issue for which that party bears the burden of production at trial.” *Wing v. Anchor Media*, 59 Ohio St.3d 108, 111, 570 N.E.2d 1095 (1991). “It should be noted that placing the above-mentioned requirements on the moving party does not mean the nonmoving party bears no burden. Requiring that the moving party provide specific reasons and evidence gives rise to a reciprocal burden of specificity for the nonmoving party.” *Mitseff v. Wheeler*, 38 Ohio St.3d 112, 115, 526 N.E.2d 798 (1988). The nonmoving party may not rest upon the allegations or denials in the pleadings but must affirmatively demonstrate the existence of a genuine issue of material fact to prevent the granting of a motion for summary judgment. *Cunningham v. Bone Dry Waterproofing, Inc.*, 66 N.E.3d 187, 2016-Ohio-3341, ¶ 7 (10th Dist.) citing *Misteff*.

The facts of Stewart's conduct are well documented by the voluminous filings. Furthermore, the facts are uncontested. As such, the Court must now determine whether Firefly is entitled to judgment as a matter of law.

VEEXATIOUS LITIGATOR STATUTE

The question before the Court is whether Stewart is a "vexatious litigator" under R.C. 2323.52. To be a "vexatious litigator" the party must engage in "vexatious conduct." The Court starts its analysis with the statutory definitions of these terms.

A "vexatious litigator" is:

[A]ny 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). "Vexatious conduct" is defined as the conduct of a party in a civil action that "obviously serves merely to harass or maliciously injure another party to the civil action," "is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law," or "is imposed solely for delay." *State ex rel. Sapp v. Franklin County Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 17 quoting R.C. 2323.52(A)(2)(a-c).

The Court's review is not limited to Stewart's conduct in this case. In determining a party a vexatious litigator, a court may consider the consistent rejection of a party's argument or legal theories. *E.g., Farley v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185 ¶ 23; *Prime Equip. Grp. Inc. v. Schmidt*, 66 N.E.3d 305, 2016-Ohio-3472 (10th Dist.). Also, courts may consider prior conduct in other cases. *Watkins v. Perry*, 107 N.E.3d 574, 2017-Ohio-9347, ¶ 35 (11th Dist.) citing *Prime Equip.*

FIREFLY'S ARGUMENT IN SUPPORT OF SUMMARY JUDGMENT

Firefly argues Stewart is a vexatious litigator because for four years she has engaged in habitual litigation that repeated the same unfounded theories about a multi-million dollar criminal enterprise hatched by her former business partners. Firefly has presented a staggering-list of what it claims is vexatious conduct. Rather than address all the instances individually, the Court will consider them in totality.

This ordeal started when Stewart was removed from her position as a member of RRL Holding. The removal brought about the Initial case. The Initial case was sent to arbitration to determine the legality of Stewart's removal. The arbitration panel determined Stewart was properly removed, and ordered appropriate relief to terminate that relationship. The arbitration award was confirmed by this Court. Stewart appealed that decision, and the decision was affirmed. She tried to appeal that decision to the Supreme Court of Ohio, which declined to hear the case. Unsatisfied, Stewart moved for reconsideration, which was also denied. To this point, Stewart was not engaging in vexatious conduct, but defiantly—and maybe quixotically—litigating the merits of her removal from RRL Holding. However, Stewart's conduct after that point is different.

Ever since Firefly prevailed on the merits, Stewart has refused to accept the result. She has been sanctioned multiple times for refusing to sign the closing documents which would end the Initial case. She has filed more appeals in that case which have been dismissed.

Beyond the Initial case, Stewart improperly delayed this case by removing it to federal court. Stewart has filed other meritless actions in other Ohio Courts and administrative agencies. There is no good faith basis for Stewart's actions because they are all attempts to relitigate the merits of her removal from RRL Holding.

Taken together, Stewart's activates are habitual and persistent conduct that meets the definition of "vexatious conduct." *Ealy v. McLin*, 2nd Dist. Montgomery No.21934, 2007-Ohio-

4080, ¶ 25 (Affirming the trial court's summary judgment that Ealy's filing of four lawsuits in a six-month period, all of which were unsupported by any good faith argument or existing law, was vexatious conduct.)

Since Stewart's conduct lacks a good faith basis and has been imposed solely for delay, it is vexatious conduct and she is a vexatious litigator. Thus, Firefly is entitled to judgment as a matter of law.

STEWART'S ARGUMENTS AGAINST SUMMARY JUDGMENT

After reviewing Stewart's opposition to the motion for summary judgment, the Court finds it necessary to describe some of the differences between a motion for summary judgment and a motion to dismiss for failure to state a claim upon which relief can be granted. They are different filings and serve different purposes in litigation. A motion to dismiss for failure to state a claim upon which relief can be granted is procedural and tests the sufficiency of the complaint. *State ex rel. Hanson v. Guernsey County Bd. of Commrs.*, 65 Ohio St.3d 545, 548, 605 N.E.2d 378 (1992). A decision granting a motion to dismiss is not a judgment on the merits of the complaint. *Id.* 547-48. "In resolving a Civ.R. 12(B)(6) motion to dismiss, the trial court may consider only statements and facts contained in the pleadings, and may not consider or rely on evidence outside the complaint." *Stainbrook v. Ohio Sec'y of State*, 10th Dist. No. 16AP-314, 2017-Ohio-1526, ¶ 11.

Differently, a motion for summary judgment seeks a decision on the merits. A motion for summary judgment allows the trial court to determine if the moving party is entitled to affirmative relief. Civ.R. 56. The motion for summary judgment must be supported by evidence that shows there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.*

Stewart's arguments against summary judgment are the same arguments she raised in her motion to dismiss and the majority of her arguments are not merit arguments. Stewart argues summary judgment should be denied because: (1) Firefly's claim does not meet basic pleading requirements; (2) Firefly's claim violates claims splitting; (3) protected activity; and (4) res judicata. Stewart's arguments about failure to meet pleading requirements and claim splitting were rejected in the Court's November 15, 2019 decision denying her motion to dismiss and will not be revisited here. Likewise, Stewart's fourth argument, although not directly addressed in the Court's November 15, 2019 decision, fails for similar reasons. The November 15, 2019 decision explained that the vexatious litigator statute expressly provides for a party to bring a separate action to declare another party a vexatious litigator. For that same reasoning, bringing a separate action under R.C. 2323.52(B), is permissible regardless of the parties' separate pleadings in the Initial case and res judicata does not apply.

Stewart's lone merits argument is that her activities are protected by statute and therefore not vexatious conduct. In support she cites R.C. 4113.52(A)(1)(a). It states:

If an employee becomes aware in the course of the employee's employment of a violation of any state or federal statute or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct, and the employee reasonably believes that the violation is a criminal offense that is likely to cause an imminent risk of physical harm to persons or a hazard to public health or safety, a felony, or an improper solicitation for a contribution, the employee orally shall notify the employee's supervisor or other responsible officer of the employee's employer of the violation and subsequently shall file with that supervisor or officer a written report that provides sufficient detail to identify and describe the violation. If the employer does not correct the violation or make a reasonable and good faith effort to correct the violation within twenty-four hours after the oral notification or the receipt of the report, whichever is earlier, the employee may file a written report that provides sufficient detail to identify and describe the violation with the prosecuting authority of the county or municipal corporation where

the violation occurred, with a peace officer, with the inspector general if the violation is within the inspector general's jurisdiction, or with any other appropriate public official or agency that has regulatory authority over the employer and the industry, trade, or business in which the employer is engaged.

R.C. 4113.52(A)(1)(a). Stewart argues, per this statute, she had a statutory duty to expose Plaintiff's activity and that this vexatious litigator action is improper retaliation. Stewart's argument fails for two reasons.

First, Stewart's argument lacks a factual foundation. Her opposition states she is serving as "an inside informant for the Federal Bureau of Investigation and the United States Department of the Treasury" to expose Firefly's redlining and anti-trust violations. However, her claim is not supported with evidence to prove these facts, such as an affidavit with documentation from these agencies avowing her work.

Second, Stewart has not complied with the statute's procedural requirements to obtain relief. Assuming Firefly's removal of Stewart was retaliation for her reporting a felony as she claims, to claim a remedy under the statute, she must prove she complied with the statute's requirements. She needs to show she properly reported the felony by filing a report with sufficient detail. R.C. 4113.52(A)(1)(a). After, she is required to "bring a civil action... within one hundred eighty days after the disciplinary or retaliatory action was taken." R.C. 4113.52(D). Stewart has failed to provide evidence that she complied with this statute, such as attaching the reports she would have filed according to R.C. 4113.52(A)(1)(a). Also, she has failed to show she claimed this remedy within 180 days of the alleged retaliation under R.C. 4113.52(D). Thus, the Court finds Stewart's arguments against summary judgment unpersuasive.

CONCLUSION

For these reasons, the Court finds there is no material question of fact and that Firefly is entitled to judgment as a matter of law. Therefore, Firefly's motion for summary judgment is **GRANTED**.

In accordance with the grant of summary judgment, the Court **ORDERS** this relief pursuant to R.C. 2323.52:

Pursuant to the Court's finding and R.C. 2323.52(D)(1)(a-c), without first seeking leave of this Court, Stewart: **shall not** institute legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; **shall not** continue any legal proceedings that Stewart has instated in the court of claims, court of common pleas, municipal court, or county court; **shall not** make any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by Stewart or another person in the court of claims, court of common pleas, municipal court, or county court;

This order will run indefinitely, pursuant to R.C. 2323.52(E); and

The Clerk shall send a certified copy of this order to the Supreme Court of Ohio for publication in a manner the Supreme Court of Ohio deems appropriate under R.C. 2323.52(H).

All court costs are to be paid by Stewart.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that there is no just cause for delay and this Judgement Entry is final.

*****THIS IS A FINAL APPEALABLE ORDER*****

IT IS SO ORDERED.

Franklin County Court of Common Pleas

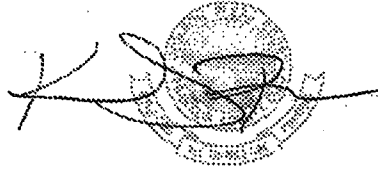
Date: 12-20-2019

Case Title: RRL HOLDING COMPANY OH ET AL -VS- MERRILEE STEWART

Case Number: 18CV007212

Type: JUDGMENT ENTRY

It Is So Ordered.



/s/ Judge Kim Brown

Electronically signed on 2019-Dec-20 page 11 of 11

THE STATE OF OHIO Franklin County, ss	} I. MARYELLEN O'SHAUGHNESSY, Clerk OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FORE- GOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>Entry</i>	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COUNTY	
THIS <i>3rd</i> DAY OF <i>March</i> , D. 20 <i>20</i>	
MARYELLEN O'SHAUGHNESSY, Clerk	
By..... <i>[Signature]</i>	Deputy

Court Disposition

Case Number: 18CV007212

Case Style: RRL HOLDING COMPANY OH ET AL -VS- MERRILEE
STEWART

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 18CV0072122019-11-0799980000
Document Title: 11-07-2019-MOTION FOR SUMMARY
JUDGMENT - PLAINTIFF: RRL HOLDING COMPANY OH
Disposition: MOTION GRANTED