

The Supreme Court of Ohio

CASE ANNOUNCEMENTS

December 3, 2024

[Cite as *12/03/2024 Case Announcements, 2024-Ohio-5646.*]

MOTION AND PROCEDURAL RULINGS

2023-1293. State ex rel. Ware v. Booth.

In Mandamus. On respondent’s motion to declare relator a vexatious litigator. Motion denied. Relator’s motion for relief from judgment denied.

DeWine, J., concurs, with an opinion joined by Brunner and Deters, JJ.

Fischer, J., concurs in part and dissents in part and would grant respondent’s motion.

DEWINE, J., concurring.

{¶ 1} I concur in the majority’s disposal of this matter. I write separately to bring some additional clarity to our decision.

{¶ 2} The underlying action is a mandamus case involving a request for public records. After Kimani Ware filed his action, the State moved for judgment on the pleadings. In support of its motion, the State presented evidence that Ware had fraudulently altered a document on which he grounded his claimed right to a writ of mandamus. 2024-Ohio-2102, ¶ 1, 3.

{¶ 3} Recognizing that this court does not resolve evidentiary issues on a motion for judgment on the pleadings, we set this matter for an evidentiary hearing. *Id.* at ¶ 5, 8. We explained that such a hearing would “allow this court not only to determine whether a writ of mandamus is proper, but also whether Kimani Ware should be sanctioned for presenting fabricated evidence to this court.” *Id.* at ¶ 1. In taking this relatively unusual step of scheduling an evidentiary hearing in a mandamus action we explained that we had “raised concerns about Ware’s apparent abuse of the judicial process in the past.” *Id.* at ¶ 7; *see also State ex rel. Ware*

v. Dept. of Rehab. & Corr., 2024-Ohio-1015, ¶ 48 (noting that record evidence “plausibly support[ed] the allegations that Ware routinely lied in affidavits and court filings”); *Id.* at ¶ 58 (DeWine, J., concurring in part and dissenting in part) (collecting cases showing that Ware often “attach[es] a fabricated public-records request to the complaint and alleg[es] that it ha[s] been ignored”).

{¶ 4} The scheduled evidentiary hearing did not take place. Before it could happen, the case was dismissed by entry of the Chief Justice, in accordance with this court’s standard procedures, because Ware failed to file a merit brief. *See* 2024-Ohio-2619. After the case was dismissed, the State filed a motion to declare Ware a vexatious litigator. In support, it recounted Ware’s “pattern of abusing the judicial process,” particularly by submitting “false statements and fraudulent documents.” The State further asserted that the reason Ware did not file a merit brief was to avoid having to submit to an evidentiary hearing: “[I]n order to avoid being called out for his untruthfulness, Relator simply walked away from these proceedings so as not to be exposed to the truth and not risk being declared a vexatious litigator, which would curtail his number of mandamus and civil actions seeking statutory awards for purported violations of R.C. 149.43.”

{¶ 5} After the State filed its motion to declare Ware a vexatious litigator, Ware filed a Rule 60(B) motion for relief from judgment contending that he did not receive this court’s alternative-writ schedule because Booth and an assistant attorney general conspired to keep it concealed from him.

{¶ 6} In the meantime, we declared Ware to be a vexatious litigator in another case. *See State ex rel. Ware v. Vigluicci*, 2024-Ohio-4997. We explained that our in camera review of documents submitted by Ware “definitively established that Ware lied about public-records requests being written on the backs of the documents he sent to the prosecutor.” *State ex rel. Ware v. Vigluicci*, 2024-Ohio-5492, ¶ 4. And we found that “Ware’s perpetrating a fraud on this court” necessitated an imposition of sanctions to protect the integrity of the judicial proceedings. *Id.*

{¶ 7} That brings me to the motions that are in front of us. Had we not already declared Ware a vexatious litigator, it would make sense to go forward with the scheduled evidentiary hearing and determine whether Ware had in fact submitted a fraudulent document in this case. After all, we do the public a disservice if we allow litigants to persistently engage in frivolous litigation and fraudulently collect fee awards. But since we have already declared Ware to be a

vexatious litigator, there is little point. Based on this designation, Ware is “prohibited from continuing or instituting legal proceedings in this court without first obtaining leave.” *Vigluicci*, 2024-Ohio-4997. So, declaring Ware a vexatious litigator in this case would provide no additional protection to the public. Thus, I concur in the majority’s judgment dismissing the State’s motion.

{¶ 8} As for Ware’s motion for relief from judgment, his claim is properly denied because Ware has not shown that he “has a meritorious defense or claim to present if relief is granted,” *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146 (1976), paragraph two of the syllabus.
