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UNION COUNTY, OHIO
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**IN THE COURT OF COMMON PLEAS
UNION COUNTY, OHIO**

DAVID W. PHILLIPS
UNION COUNTY PROSECUTING ATTORNEY,

Plaintiff,

vs.

Case No. 21-CV-0022

MICHAEL JASON FETHEROLF,

Defendant.

Judge Dale Crawford

DECISION AND ORDER DECLARING DEFENDANT A VEXATIOUS LITIGATOR

Plaintiff is the Union County Prosecuting Attorney seeking a finding by this Court designating Defendant, Michael J. Fetherolf, a "Vexatious Litigator" as defined in Rev. Code 2323.52 (A)(3).

The Court conducted an evidentiary hearing and received written and oral closing arguments.

In 2016 the defendant was convicted by a jury of rape of a person less than thirteen pursuant to Rev. Code 2902.02 (A)(1)(b); one count of gross sexual imposition pursuant to Rev. Code 2907.05; and, one count of intimidation of a witness pursuant to Rev. Code 2921.04 (B). The defendant was sentenced to prison for a term of 25 years to life. The sentence was affirmed upon appeal. After exhausting his numerous criminal appeals, the defendant

commenced a five-year process of civil litigation seeking redress for what he believed to be an unfair police and prosecutorial process leading up to and including his criminal trial.

FINDING OF FACTS

The plaintiff introduced 44 exhibits which evidence Defendant's numerous criminal and civil court filings in the Common Pleas Court, Court of Appeals, and Supreme Court in the past five years. The Court has reviewed the exhibits and will here by adopt most of Plaintiff's references to those exhibits as its finding. The definition of "vexatious conduct" and "vexatious litigator" set forth in Rev. Code 2325.52, only include "civil" filings and only includes Common Pleas and Courts of Appeal. While there are references in the factual finding to criminal filings and filings in the Supreme Court, for purposes of making its conclusions of law, the Court did not include criminal filings or Supreme Court filing.

The Court adopts the following factual assertions from Plaintiff's Closing Argument as its findings:

"Before Defendant's direct appeal was adjudicated, Defendant filed a pro se motion for new trial arguing that there was insufficient evidence to support his conviction because, according to Defendant, the victim stated Defendant was only touching the outside of her vagina. Ex. 1. Ex. 1 also contained arguments that the DNA evidence was improper. This motion was denied by the Court. Ex. 2. Defendant next filed a petition to vacate his conviction, alleging 25 errors. Ex. 3. This filing contained the already- rejected argument that there was insufficient evidence based on Defendant allegedly only touching the outside of the victim's vagina. *Id.* at p.4. This petition was denied by the Court.

Ex. 4.

Defendant next turned to the Third District Court of Appeals, where he filed an application to reopen his appeal and he yet again argued there was insufficient evidenced to convict him. Ex. 5. This application was denied by the Court. Ex. 6. Defendant then filed a 42 page motion for relief from judgment pursuant to the Ohio Rules of Civil Procedure (Ex.7), a 44 page motion for relief from judgement pursuant to the Ohio Rules of Civil Procedure (Ex.8), a 35 page motion to supplement the motions (Ex. 9), and a supplemental motion for relief from judgment (Ex.10) all of which were denied in the same entry. Ex.11. Exhibit 11 did not reach the merits of Defendant's arguments, but the Court wrote a note at the bottom of page 2 which advised Defendant that if the Court had reached the merits, the motion still would have been denied. Ex. 11, p.2.

Defendant filed a motion for leave to file a new trial motion that argued about the DNA. Ex. 12. The State filed a memorandum contra and Defendant filed a motion to strike that memorandum. Ex. 16. The motion to strike not only alleged the State's filing was untimely, but then went on to restate the merits of the motion for leave. *Id.* Before Exhibit 12 received a ruling, Defendant filed a motion for new trial which alleged, among many other things, that he only touched the outside of his victim's vagina, and that the DNA was improper. Ex. 19. All his motions were denied. Ex. 20.

Defendant filed an "accusation by affidavit" against the assistant prosecutor and others involved in his criminal trial. Ex. 17. The special prosecutor appointed to the case reported that there were no violations of the law to be prosecuted. *Id.* The Court filed an entry reiterating the

special prosecutor's findings. *Id.* Defendant appealed that entry of the Court. Ex. 15. That appeal was dismissed for lack of jurisdiction. Ex. 17.

While other motions were pending, Defendant filed a complaint for mandamus in the Third District Court of Appeals, asking that the special prosecutor be forced to file charges against the assistant prosecutor who handled his criminal case, his appellate counsel, and a witness from BCI&L. Ex. 13. This complaint was dismissed. Ex. 14.

Undeterred by multiple courts' unwillingness to force charges, Defendant files a motion for reconsideration of the Third District's denial of his appeal. Ex. 18. This motion was also denied. Ex. 21.

Defendant then returned to the appellate case with his direct appeal and filed an 87-page motion for relief from judgement, again pursuant to the Ohio Rules of Civil Procedure. Ex. 22. By the time of this filing, Defendant's four other motions under Civ. R. 60(B) had been denied in an entry that explained to him that Civ. R. 60(B) was not a substitute for post-conviction relief and thus was an improper remedy. Ex. 11.

In December of 2020, Defendant filed another motion for new trial, once again alleging that he only touched his victim on the outside of her vagina, and that there were issues with the DNA evidence. Ex. 23. This motion was dismissed in a entry that describes the filing as a "75 page rambling document, with an additional 40 plus pages of attachments, couched in terms of a 'Motion For a New Trial Pursuant to Crim.R.33 (A)(1)(4)(5) and (B).'" Ex. 24. Defendant then filed a motion for reconsideration where he reiterated his arguments. Ex. 25. This motion was also denied. Ex. 26.

Three weeks after receiving the decision in Exhibit 26, Defendant files a motion to dismiss the indictment which, again, reiterated the same arguments seen throughout his filings. Ex. 27. That same day, he filed another motion for leave to file a new trial motion. Ex. 28. The motion was denied in an entry which described it as "frivolous and ha[ving] no basis in law." Ex. 29.

While these filings were occurring in the Union County Court of Common Pleas and Third District Court of Appeals, Defendant was also filing in the Ohio Supreme Court. Defendant filed a notice of appeal to the Ohio Supreme Court (Ex.30), for a case which the Court declined to accept. Ex. 31. Again, Defendant filed a notice of appeal to the Ohio Supreme Court (Ex. 32), for a case which the Court declined to accept. Ex. 33.

Defendant then filed a complaint for a writ of mandamus in the Ohio Supreme Court (Ex. 34), which the Court ultimately dismissed. Ex. 35. When that was denied, Defendant filed a motion for reconsideration. Ex. 36. This motion was denied as well. Ex.37. In a second case number, Defendant filed a motion for reconsideration (Ex.38) which was identical to Ex. 36. This motion was also denied. Ex.39.

Defendant filed a complaint for a writ of prohibition (Ex.40), which was denied. Ex.41. He then filed a second complaint for a writ of prohibition (Ex.42), which was denied. Ex.43. Defendant filed a second complaint for writ of mandamus in the Ohio Supreme Court (Ex.44). When the State tried to respond, Defendant filed a motion to strike (Ex. 45), which contained a slew of allegations against the assistant prosecuting attorney. The complaint for a writ of

mandamus was ultimately dismissed. Ex. 46. Defendant then filed another notice of appeal (Ex. 47), for a case which the Ohio Supreme Court declined to accept. Ex. 48.

In total, between the date of his conviction and the filing of the complaint in this case, Defendant filed no less than five (5) motions for relief from judgment; four (4) notices of appeal; four (4) motions for reconsideration; three (3) complaints for writs of mandamus; three (3) motions for new trial; two (2) motions for leave to file motions for new trial; two (2) motions to strike; two (2) complaints for writs of prohibition; one (1) motion to dismiss the indictment; one (1) motion to vacate the conviction; and one (1) application to reopen.”

CONCLUSIONS OF LAW

R.C. 2323.52(A) states, in pertinent part:

(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 agreement 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.

“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.” Mayer v. Bristow (2000), 91 Ohio St.3d3,13

(see also *Hull v. Sachyyn*, 145 Ohio App 3d193(CA8,2001)). The Supreme Court further quoted at p.13:

“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 time of judicial resources -- that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration or proper litigation.”

The Tenth District in *Helzfrich v Allstate Ins. Co.*, 12 AP 559 para 25 (CA 10, Sept. 30, 2013) held: “The Vexatious Litigator statute indicates the right of the courts and the tax payers of the state to be free from the delay and expense associated with baseless litigation... It’s not the number of frivolous lawsuits one files, but the nature of conduct that determines whether a person is a “vexatious litigator” (see also *Prime Equipment Group v Jack Schmidt, Jr.*, 2016-Ohio-3472 (CA 10th 2016).


In the past five years the defendant has filed approximately twenty-five legal actions, none of which had any legal or factual merit. His frivolous actions have caused the Union County Prosecutor and this Court delays and expenses without any reasonable grounds. Defendant clearly meets the definition of “Vexatious Litigator” and without the imposition of the sanction set forth in Rev. Code 2323.52 (D) (1) he will continue to make frivolous filings. ¹

¹ The Defendant testified that he would never stop his filings.

The Court hereby orders that the defendant be, and is hereby prohibited from initiating any civil action in any Common Pleas Court or the Court of Claims without first "obtaining leave of this Court to proceed." (Rev. Code 2323.52 (D)(1)(a)).

Costs to the Defendant.

IT IS SO ORDERED.


Dale A. Crawford, Judge by Assignment

cc:
David W. Phillips, Union County Prosecuting Attorney
Defendant