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AJ WILLIAMS
COMMON PLEAS COURT
GREENE COUNTY, OHIO

IN THE COMMON PLEAS COURT OF GREENE COUNTY, OHIO
GENERAL DIVISION (CIVIL)

STATE OF OHIO,

CASE NO. 2020 CV 0642

Plaintiff,

JUDGE ADOLFO A. TORNICHIO

v.

THOMAS M. WEST,

JUDGMENT ENTRY GRANTING

Defendant.

MOTION FOR SUMMARY JUDGMENT

This matter is before the Court on a Motion for Summary Judgment filed by the State of Ohio on December 28, 2020. The Defendant, Thomas West filed his Objections to the Motion for Summary Judgment on March 1, 2021¹. This matter is now fully briefed for this Court's consideration.

FACTUAL BACKGROUND:

On December 28, 2020, Plaintiff filed a Complaint alleging that West should be declared a vexatious litigator pursuant to Ohio Revised Code § 2323.52. Plaintiff alleges "[s]ince his direct appeal was overruled on September 13, 2017, the Defendant has filed thirty (30) pro se motions, two (2) post-decision filings in his direct appeal, and two (2) additional appeals that may now be used to establish his status as a vexatious litigator." Complaint ¶ 4. Plaintiff further avers that West's vexatious conduct arises out of a criminal case in which West was convicted: Greene County Common Pleas Court Case No. 2015-CR-129.

In the criminal case, West was convicted of felonious assault with a gun specification, two counts of having weapons while under disability, and tampering with evidence; West was sentenced to an aggregate term of seven years in prison.

¹ In a Magistrate's Order filed on February 10, 2021, Magistrate Hayden granted West an extension of time to file a response to the State's Motion for Summary Judgment.

Plaintiff avers “[a]lthough denied on multiple occasions, the Defendant has repeatedly and persistently filed post-conviction motions challenging the legitimacy of his indictment...; rulings this Court made regarding pretrial motions in his criminal case; this Court’s jurisdiction over him...; [and] motions for the release of grand jury transcripts and materials...” Complaint ¶ 7. Plaintiff alleges that in many of these filings – those that challenge the legitimacy of the indictment and those that challenge the legitimacy of this Court’s jurisdiction over him in particular – West has made the same meritless argument. West has repeatedly raised the argument that the indictment filed in his criminal case was somehow defective and that the trial court lacked subject-matter jurisdiction over him; West has also repeatedly sought copies of grand jury transcripts.

LAW AND ANALYSIS:

Pursuant to Civ.R. 56(C), summary judgment is proper when (1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law and (3) reasonable minds, after construing the evidence most strongly in favor of the nonmoving party, can only conclude adversely to that party. *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 696 N.E.2d 201 (1998). The moving party bears the burden of informing the court of the basis of the motion and identifying those portions of the pleadings, depositions and other such material which it believes demonstrates the absence of a genuine issue of material fact. *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988). Moreover, any inferences to be drawn from the underlying facts must be viewed in the light most favorable to the nonmoving party. *Williams v. First United Church of Christ*, 37 Ohio St.2d 150 (1974).

Once the moving party satisfies its burden, the nonmoving party may not rest upon mere allegations or denials of the party’s pleadings. *Benjamin v. Deffet Rentals*, 66 Ohio St.2d 86 (1981) ; Civ.R. 56(E). Rather, the burden shifts to the nonmoving party to respond, with affidavits or as otherwise permitted by Civ.R. 56, setting forth specific facts that show that there is a genuine issue of material fact for trial. *Id.* The non-moving party has the burden “to produce evidence on any issue for which that party bears the burden of production at trial.” *Wing v. Anchor Media, Ltd.*, 59 Ohio St.3d 108 (1991).

Vexatious Litigator

A prosecuting attorney “who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent vexatious conduct to have that person declared a vexatious litigator.” R.C. § 2323.52(B).

Pursuant to R.C. § 2323.52(A)(2), “vexatious conduct” means any 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.

“Conduct” means any of the following:

- (a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;
- (b) The filing by an inmate of a civil action or appeal against a government entity or employee, the assertion of a claim, defense or other position in connection with a civil action of that nature or the assertion of issues of law in an appeal of that nature, or the taking of any other action in connection with a civil action or appeal of that nature.

R.C. § 2323.51(A)(1).

R.C. § 2323.52(A)(3) 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 a 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.

The purpose of the vexatious litigator statute has been described as follows:

“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

throughout these filings are that the indictment filed in his criminal case was somehow defective and that the court lacked subject-matter jurisdiction over him; West has also repeatedly sought copies of transcripts of the grand jury proceedings. West has made these argument in numerous filings that have been submitted by the State, despite the fact that they have previously been rejected or overruled by this Court.

The Court finds that the arguments advanced by West outlined above are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. These arguments have been repeatedly rejected by this Court and by the Second District Court of Appeals. The Court finds the State has met its burden of showing the lack of a genuine issue of material fact that West is a vexatious litigator. The Court further finds that West has failed to meet his reciprocal burden of showing the existence of a genuine issue of material fact.

CONCLUSION

For the foregoing reasons, the State of Ohio's Motion for Summary Judgment is GRANTED. Pursuant to R.C. § 2323.52(D)(1), Defendant Thomas M. West is hereby designated as a vexatious litigator and is prohibited from doing any of the following without first obtaining leave of this Common Pleas Court of Greene County, Ohio to proceed:

1. Instituting legal proceedings in the court of claims, or in a court of common pleas, municipal court, or county court;
2. Continuing any legal proceedings that Defendant has instituted in the court of claims, or in a court of common pleas, municipal court, or county court prior to the entry of this order; or
3. Making any application, other than an application for leave to proceed under R.C. § 2323.52(F)(1), in any legal proceedings instituted by Defendant or another person in the court of claims, or in a court of common pleas, municipal court, or county court.

In accordance with R.C. § 2323.52(H) the Greene County Clerk of Court is ordered to send a certified copy of this order to the Supreme Court for publication in a manner that the Supreme Court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in

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 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, 91 Ohio St.3d 3, 740 N.E.2d 656. Vexatious litigation services to “deplet[e] judicial resources and unnecessarily encroach[] upon the judicial machinery needed by others for the vindication of legitimate rights.” *Id.* “At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings.” *Id.*

Although the vexatious litigator statute applies to conduct in a civil action, Ohio courts have held that certain post-conviction filings by a defendant in a criminal case are civil in nature. *Watkins v. Pough*, 11th Dist. Trumbull No. 2016-T-0100, 2017 Ohio 7026. The *Watkins* Court noted that the initial filings prior to conviction and the direct appeal could not be considered for purposes of making a vexatious litigator finding, but post-conviction motions, appeals, and original actions were generally of a civil nature and could therefore be considered.

As an initial matter, the Court must determine what conduct of West may be considered in determining whether West is a vexatious litigator. As noted above, this Court can only consider West’s post-conviction filings that are civil in nature in making this determination. The Plaintiff has attached 112 exhibits to its Motion for Summary Judgment. Included in those exhibits are 5 motions for judicial release and 2 motions for jail time credit. The Court finds that West’s motions for jail time credit and judicial release are criminal in nature and cannot be considered in the Court’s determination as to whether West is vexatious litigator.

That said, the Court finds that the following filings are civil in nature: Objection to Manifest Injustice (Exhibit 72); “Affidavit” – In the Nature of a Motion to Vacate Judgment and Other Requests (Exhibit 74); Motion for New Trial (Exhibit 79); Motion for Matters Occurring Before the Grand Jury (Exhibit 91) and Motion to Adjudicate Legitimacy of the Allege [sic] Indictment (Exhibit 103)². Upon review, the Court notes that West’s principal arguments

² West has appealed this Court’s rulings to the Second District Court of Appeals. See Second District Court of Appeals Case Nos. 2020-CA-22 and 2020-CA-24.

refusing to accept pleadings or other papers submitted for filing by Thomas M. West, a vexatious litigator, unless West obtained leave to proceed from this Court.

In accordance with R.C. § 2323.52(I), whenever it appears by suggestion of the parties or otherwise that Thomas M. West has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from this Court, the court in which the legal proceedings are pending shall dismiss the proceedings or application of Mr. West.

IT IS SO ORDERED.


JUDGE ADOLFO A. TORNICHIIO *GH*

Service of Copy: A copy here of was served upon:

MARCY A. VONDERWELL, ESQ. via facsimile (937) 562-5107
THOMAS M. WEST, Inmate #A720823, Marion Correctional Institution, P.O. Box 57, Marion,
Ohio 43301-0057


Assignment Commissioner