

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
GENERAL DIVISION

G. GARY TYACK, :
 :
 Plaintiff, : Case No. 21CV2747
 :
 vs. : Judge Stephen L. McIntosh
 :
 ALPHONSO-DWAYNE MOBLEY JR, :
 :
 Defendant. :

**JUDGMENT ENTRY AND DECISION GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**
(FILED DECEMBER 27, 2021)

AND

ORDER DECLARING DEFENDANT A VEXATIOUS LITIGATOR

MCINTOSH, J.

This matter comes before the Court on the Motion for Summary Judgment filed by Plaintiff G. Gary Tyack in his capacity as the Franklin County Prosecuting Attorney, on December 27, 2021. Defendant has filed many motions since the motion for summary judgment was filed, but none of the motions address the issues within the motion for summary judgment. Accordingly, the motion is deemed submitted and ripe for adjudication. For the reasons that follow, the Court finds Plaintiff's Motion for Summary Judgment well-taken and hereby **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiff initiated this action on May 3, 2021 via Complaint seeking an Order declaring Defendant Mobley to be a vexatious litigator pursuant to R.C. 2323.52. Mobley is an inmate in the custody of the Ohio Department of Rehabilitation and Correction ("DRC"). His inmate

identification number is A734888, and he is currently incarcerated at the Southeast Correctional Institution in Lancaster.

Since May 1, 2017, Defendant has filed at least 15 different post-conviction motions as well as multiple appeals. Most of the motions raise the exact claim but worded differently. The claims he raises are meritless, yet he continues to file the same motion or type of motion repeatedly. The State's motion outlines all the motions filed by the Defendant with its attached exhibits which appropriately summarize the chronology and history of this matter. Plaintiff argues Defendant's action warrant an order declaring him a vexatious litigator.

II. SUMMARY JUDGMENT STANDARD

Under Civ.R. 56(C), summary judgment is appropriate when the moving party is entitled to judgment as a matter of law because there is no dispute of material fact. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). The party moving for summary judgment must inform the trial court of the basis for the motion and point to parts of the record that demonstrate the absence of a genuine issue of material fact, *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996), and it must do so in the manner required by Civ.R. 56(C). *Castrataro v. Urban*, 10th Dist. Franklin No. 03AP-128, 2003-Ohio-4705, ¶ 14. Once the moving party has met this burden, the non-moving party's reciprocal burden to point to parts of the record demonstrating an issue of material fact is triggered. *Dresher* at 293. "[S]ummary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Davis & Meyer Law, Ltd. v. Pronational Ins. Co.*, 10th Dist. Franklin No. 06AP-730, 2007-Ohio-3552, ¶ 12.

III. ANALYSIS

A. Standard of Review

R.C. 2323.52 provides the authority for a common pleas court to designate a person as a vexatious litigator. R.C. 2323.52(A)(3) defines “vexatious litigator” as:

[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. * * *

“Vexatious conduct” is defined as conduct of a party in civil actions 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.

R.C. 2323.52(A)(2)(a)-(c).

The above-cited definition of vexatious conduct mirrors the definition of frivolous conduct in civil actions according to R.C. 2323.51. Under R.C. 2323.51(A)(2)(a), which expressly applies to inmates in civil actions, “frivolous conduct” is that which satisfies any of the following:

- (i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically, so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically, so identified, are not reasonably based on a lack of information or belief.

R.C. 2323.51(A)(2)(a)(i)-(iv).

With respect to an inmate's commencement of a civil action against a government entity or employee, the inmate's institution of the action constitutes frivolous conduct under R.C. 2323.51(A)(2)(b) when any of the following apply:

(i) The claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law.

(ii) It is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal.

(iii) The claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law

that are the basis of the current appeal involve the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

R.C. 2323.51(A)(2)(b)(i)-(iii).

The Supreme Court of Ohio has expressed that the vexatious litigator statute serves an important function:

[t]he 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 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, 2000-Ohio-109, 91 Ohio St.3d 3, 13.

The high court further expressed:

* * * vexatious litigators oftentimes 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.

The relationship between these goals and the methods employed in R.C. 2323.52 to achieve them is substantial. 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. It provides authority to the court of common pleas to require, as a condition precedent to taking further legal action in certain enumerated Ohio trial courts, that the vexatious litigator make a satisfactory demonstration that the proposed legal action is neither groundless nor abusive. Thus, "the

vexatious litigator statute bears a real and substantial relation to the general public welfare because its provisions allow for the preclusion of groundless suits filed by those who have a history of vexatious conduct."

Id. at 13-14. (Citations omitted).

R.C. 2323.52(B) outlines the procedure to institute a civil action seeking a vexatious litigator designation:

A person * * * 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. The person * * * may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

There is no magic number of frivolous claims that must be filed before crossing the vexatious litigation threshold. The Tenth District has held that a vexatious litigator designation may be based upon a person's behavior in a single civil action or multiple civil actions. *Earthy v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, ¶48. The Tenth District determined that appellant's:

repetitive arguments and unrelenting pleadings on issues already decided issues have congested the judicial process and hindered the trial court's and receiver's lawful duties. His persistent and tedious grievances inserted into every pleading of every type have amounted to an unnecessarily massive record. His tormenting of every party whom he sees as aiding his wife has risen to the level of compulsiveness.

Id. at ¶ 49.

Significantly, the Tenth District quoted with approval the following passage from

Borger v. MrErlane, 1st Dist. No. C-01026, 2001-Ohio-4030:

* * * vexatious conduct, as defined in R.C. 2323.52(A)(2)(a), requires proof that [the appellant's] conduct serves merely to harass or maliciously injure another party to the civil action. It is not necessary, therefore, that [the appellant] intends for her conduct to be harassing, or that she not sincerely believe in the justness of her cause. Rather, it is sufficient that her conduct served the purpose, or has the effect, of harassing [the appellee] by obligating her to respond to a legal action for which there is no objective, reasonable grounds.

Id. at ¶ 51. (Emphasis sic).

B. Application

In arguing that the Court should declare Mobley a vexatious litigator, Plaintiff contends that Defendant's actions are consistent with a vexatious conduct. Plaintiff asserts that Defendant's conduct is "habitual and persistent." The fact that each and every claim has failed, Plaintiff argues clearly proves that he lacked "reasonable grounds" to continue filing these motions.

After careful consideration and applying the appropriate standard of review and principles of law, the Court agrees. The evidence in the record clearly demonstrates that Mobley's activity constitutes vexatious conduct pursuant to R.C. 2323.52. It is important to note that, as held by the *Farley* court, a finding of vexatious conduct is not dependent upon whether the litigant intended for his conduct to be harassing. Rather, the focus is whether the conduct serves the purpose of or has the effect of harassing others by obligating them to respond to lawsuits for which there are no objective, reasonable grounds. Thus, the Court does not look to Defendant's subjective aim and instead examines the effect his motions have had upon the Plaintiff and the judicial system. It is clear that Defendant's filings had a harassing and injurious effect, especially in the form of the

costs borne by the State and the efforts expended by counsel in performing Plaintiff's legal obligation to defend against each motion.

There are no genuine issues of fact regarding Defendant's habitually persistent litigious behavior. Vexatious litigators are individuals who use litigation, with seemingly indefatigable resolve and prolificacy. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system.

CONCLUSION

Upon careful consideration of all the evidence before it, the Court finds Defendant's conduct to be that which the vexatious litigator statute aims to thwart. All motions currently pending are moot. Accordingly, the Court finds that Defendant has engaged in vexatious conduct as set forth in R.C. 2323.52(A)(2)(a)-(c), and thus a vexatious litigator designation is appropriate under R.C. 2323.52(A)(3). Therefore, Plaintiff's Motion for Summary Judgment is well-taken and hereby **GRANTED**. Defendant Alphonso Dwayne Mobley Jr. is hereby a **Declared Vexatious Litigator**.

Pursuant to R.C. 2323.52(D)(1), Defendant Alphonso Dwayne Mobley Jr. is prohibited from doing the following without first obtaining leave of court to proceed:

(a) Instituting any litigation, continuing any litigation or making any application in any litigation in any court of the State of Ohio or its subdivisions without first obtaining leave from the Honorable Court.

(b) Defendant is prohibited from continuing any legal proceedings that the vexatious litigator had instituted in any of the courts pursuant to R.C. 2323.52(D)(1)(b), without first obtaining leave from this Court.

(c) Preliminary Injunction under Civ. R 65 is granted, and Defendant is precluded from instituting, continuing or making any application in any litigation in any Ohio court without first obtaining leave from this Court.

It is FURTHER ORDERED that, pursuant to R.C. 2323.52(H), the clerk of the court shall send a certified copy of this Order to the Clerk of the Supreme Court of Ohio 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 refusing to accept pleadings or other papers submitted for filing by Alphonso Dwayne Mobley Jr. without first obtaining leave to proceed under this section.

IT IS SO ORDERED.

Copy electronically to:
All counsel.

Copy via ordinary mail to: Alphonso Mobley 734888
Southeast Correctional Institution
5900 BIS Rd. SW
Lancaster, Ohio 43130

Franklin County Court of Common Pleas

Date: 01-20-2023
Case Title: G GARY TYACK -VS- ALPHONSO D MOBLEY JR
Case Number: 21CV002747
Type: DECISION/ENTRY

It Is So Ordered.

/s/ Judge Stephen L. McIntosh

Electronically signed on 2023-Jan-20 page 10 of 10

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 FORGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL
JUDGMENT ENTRY	
NOW ON FILE IN MY OFFICE	
WITNESS MY HAND AND SEAL OF SAID COUNTY	
THIS 23	DAY OF JAN A.D. 2023
MARYELLEN O'SHAUGHNESSY, Clerk	
By	Deputy