

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

State of Ohio, <i>ex rel.</i>	:	Case No. 17CA13
Mike DeWine, Ohio Attorney General	:	
	:	
Plaintiff-Appellee,	:	
	:	
v.	:	
	:	<u>JUDGMENT ENTRY</u>
Cinseree Johnson,	:	
a/k/a Cindy Johnson, et al.,	:	
	:	
Defendants-Appellants.	:	RELEASED: 06/21/2017

Harsha, A.J.

{¶1} Appellant Cinseree Johnson filed a notice of appeal from a final order granting Appellee Ohio Attorney General a default judgment. However, Johnson is a vexatious litigator and is required to file an application for leave to proceed in the court of appeals. Johnson failed to file her application for leave in accordance with the vexatious litigator statute. Therefore we must dismiss the appeal for lack of jurisdiction. We also dismiss all pending motions for lack of jurisdiction.

I. FACTUAL BACKGROUND

{¶2} On September 17, 2008, the Athens County Court of Common Pleas declared Johnson to be a vexatious litigator under R.C. 2323.52(D)(1) and prohibited her from instituting or continuing legal proceedings without first obtaining leave of court as provided in R.C. 2323.52(F). On February 6, 2013, the Supreme Court of Ohio also found her to be a vexatious litigator for purposes of proceeding in its Court.

{¶3} In 2016 the Ohio Attorney General filed a complaint against Johnson and the Mount Zion Baptist Church, LLC seeking to dissolve the nonprofit organization, to impose a constructive trust over the charitable assets, and to enjoin Johnson from

soliciting for charitable purposes, from incorporating a nonprofit organization, and from serving on the board of a charitable organization. According to the trial court's decision, Johnson and Mount Zion Baptist Church were served with the complaint but failed to answer or otherwise defend. The trial court entered a default judgment in favor of the Ohio Attorney General on March 16, 2017.

{¶4} On April 14, 2017, within the 30-day time period for filing her appeal in App.R. 4(A), Johnson filed a notice of appeal in the Athens County Court of Common Pleas, but she did not file an application for leave to proceed in the Athens County Court of Appeals. On May 16, 2017, after the expiration of the 30-day period for filing her appeal, Johnson filed a "Motion for Leave to Continue and/or File the Appeal." The Ohio Attorney General filed a motion to dismiss on the ground that Johnson failed to follow the statutory procedures in R.C. 2323.52(F)(2) and therefore R.C. 2323.52(I) requires that we dismiss her appeal.

II. LEGAL ANALYSIS

{¶5} R.C. 2323.52(F)(2) provides:

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave

to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

R.C. 2323.52(I) provides:

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

{¶6} R.C. 2323.52(F)(2) provides that the time period for filing a notice of appeal under App.R. 4(A) is tolled “during the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order * * *.” *See Humbert v. Borkowski*, 6th Dist. No. F-05-007, 2005-Ohio-918, fn. 1. However, where the vexatious litigator files the application for leave after the expiration of the 30-day time limit for filing the notice of appeal, the court of appeals patently and unambiguously lacks jurisdiction to exercise jurisdiction over the appeal. *See State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 16, 21-22, 25; *see also Prime Equip. Group, Inc. v. Schmidt*, 10th Dist. No. 15AP-584, 2015-Ohio-3683, ¶ 6-8 (vexatious litigator is not required to file the application for leave *before* filing a notice of appeal, but he or she must do so *before* the expiration of the 30-day time for filing an appeal in App.R. 4(A)).

{¶7} Here Johnson filed her notice of appeal within the 30-day time for filing an appeal under App.R. 4(A), but did not file her application for leave within that 30-day

period. Therefore, under R.C. 2323.52(I), we must dismiss the appeal for lack of jurisdiction. *Sapp, supra*.

III. CONCLUSION

{¶8} Johnson failed to comply with R.C. 2323.52(F)(2), therefore we lack jurisdiction over her appeal. We **GRANT** appellee's motion to dismiss. All other pending motions are dismissed for lack of jurisdiction.

MOTION GRANTED. APPEAL DISMISSED. PENDING MOTIONS DISMISSED. IT IS SO ORDERED.

Abele, J. and McFarland, J.: Concur.

For the Court

BY: _____
William H. Harsha, Administrative Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.