

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

MEL M. MARIN,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2011-T-0123
TRUMBULL COUNTY, et al.,	:	
Defendants,	:	
CUYAHOGA COUNTY, et al.,	:	
Defendants-Appellees.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2011 CV 01936.

Judgment: Appeal dismissed.

Mel M. Marin, pro se, P.O. Box 80454, San Diego, CA 92138 (Plaintiff-Appellant).

Dale F. Pelsozy, Law Offices of Dale F. Pelsozy, P.O. Box 391411, Solon, OH 44139 (For Appellees).

Kimberly V. Riley and *Brian M. Spiess*, Montgomery, Rennie & Jonson, LPA, 36 East 7th Street, Suite 2100, Cincinnati, OH 45202 (For Appellee, Laura Gallagher).

MARY JANE TRAPP, J.

{¶1} On December 20, 2011, plaintiff-appellant, Mel M. Marin, filed a notice of appeal from two judgment entries filed in the Trumbull County Court of Common Pleas, Case Number 2011 CV 01936, both dated November 23, 2011. These judgment entries dismissed certain parties from Mr. Marin's civil action. Subsequently, on

February 21, 2012, the trial court entered judgment declaring appellant to be a vexatious litigator pursuant to R.C. 2323.52.

{¶2} Upon review of the record, Mr. Marin has failed to comply with R.C. 2323.52, which provides, in pertinent part, as follows:

{¶3} “(D)(3) A person who is subject to an order entered pursuant to division (D)(1) of this section may not institute legal proceedings in a court of appeals, *continue any legal proceedings that the vexatious litigator had instituted in a court of appeals prior to entry of the order*, or make any application, other than the application for leave to proceed allowed by division (F)(2) of this section, in any legal proceedings instituted by the vexatious litigator * * * in a court of appeals *without first obtaining leave of the court of appeals to proceed* pursuant to division (F)(2) of this section.

{¶4} “* * *

{¶5} “(F)(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.” (Emphasis added.)

{¶6} Further, R.C. 2323.52(I) provides, in pertinent part, as follows:

{¶7} “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.” (Emphasis added.)

{¶8} It is axiomatic that when used in a statute, the word “shall” denotes that compliance with the command of that statute is mandatory unless there appears a clear and unequivocal legislative intent that it receive a construction other than its ordinary usage. *Dept. of Liquor Control v. Sons of Italy Lodge 0917*, 65 Ohio St.3d 532, 534 (1992).

{¶9} Here, while the instant appeal was pending, the trial court entered judgment declaring Mr. Marin to be a vexatious litigator. At no time after the trial court entered such finding did Mr. Marin file an application in this court for leave to proceed with the instant appeal. Accordingly, this court is required to dismiss the appeal pursuant to R.C. 2323.52(I). *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, ¶24. The instant appeal is therefore dismissed.

{¶10} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.