

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

MEL M. MARIN,	:	MEMORANDUM OPINION
Plaintiff-Appellant,	:	
- VS -	:	CASE NO. 2012-T-0025
TRUMBULL COUNTY, et al.,	:	
Defendants,	:	
RONAN FACTORA, M.D., 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).

Susan M. Audey and Edward Taber, Tucker Ellis, L.L.P., 925 Euclid Avenue, Suite 1150, Cleveland, OH 44115-1414 (For Appellees).

MARY JANE TRAPP, J.

{¶1} On March 13, 2012, plaintiff-appellant, Mel M. Marin, filed a notice of appeal from a judgment entry filed in the Trumbull County Court of Common Pleas, Case No. 2011 CV 1936, dated February 21, 2012. The judgment entry, which was not attached to the notice of appeal, as required by Local Appellate Rule 3(D)(3), inter alia, declares Mr. Marin to be a vexatious litigator pursuant to R.C. 2323.52.

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

{¶2} “(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.

{¶3} “* * *

{¶4} “(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.)

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

{¶6} “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.)

{¶7} 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).

{¶8} The Supreme Court of Ohio has held that the requirement of R.C. 2323.52(D)(3) applies to “an appeal instituted from an initial declaration of vexatious-litigator status.” *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, ¶26.

{¶9} Here, subsequent to the judgment entry of the trial court declaring Mr. Marin to be a vexatious litigator, he filed the instant appeal without first seeking leave to proceed in this court. Accordingly, this court is required to dismiss the appeal pursuant to R.C. 2323.52(I). *Id.* at ¶24. The instant appeal is therefore dismissed.

{¶10} Appeal dismissed.

TIMOTHY P. CANNON, P.J.,

CYNTHIA WESTCOTT RICE, J.,

concur.