**[Cite as *State ex rel Creative Constr. Servs., L.L.C. v. Grosz,* 2015-Ohio-5593.]**

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
MIAMI COUNTY

STATE OF OHIO EX REL
CREATIVE CONSTRUCTION SERVICES LLC

*Relator*

v.

WILLIAM R. GROSZ

*Respondent*

Appellate Case No. 15-CA-21

[Original Action in Quo Warranto]

**DECISION AND FINAL JUDGMENT ENTRY**
December 31, 2015

PER CURIAM:

**{¶ 1}** On October 6, 2015, Carl E. Huelsman filed a "Petition for Writ of Quo Warranto pursuant to O.R.C. § 2733.37 Remedies Cumulative," signing as "Statutory Agent, and Executor" of Creative Construction Services LLC. On October 7, 2015, Huelsman filed an amended petition, setting out many of the same allegations and amending the party designations, among other things. He signed the amended petition as Executor.

**{¶ 2}** The Miami County Common Pleas Court declared Huelsman a vexatious litigator on July 22, 2011. *See Nasal v. Huelsman,* Miami C.P. No. 11-242 (July 22, 2011). Pursuant to R.C. 2323.52(D)(3), a person who has been declared a vexatious

litigator may not "institute or continue any legal proceedings in a court of appeals" without first filing an application for leave to proceed in the court of appeals where the legal proceedings would be instituted or are pending, and obtaining leave of that court. In the present matter, Huelsman has not filed an application for leave to proceed pursuant to the vexatious litigator statute, and this court has not granted such leave.

**{¶ 3}** On October 13, 2015, this court ordered Huelsman to show cause why the petition should not be dismissed pursuant to the mandatory dismissal provision of the vexatious litigator statute, which provides:

> 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.) R.C. 2323.52(I). We also ordered Huelsman to show cause why the matter should not be dismissed for his apparent unauthorized practice of law on behalf of Creative Construction Services LLC. *See Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 85 Ohio St.3d 156, 160-161, 707 N.E.2d 499 (1999) (ordinarily, when a non-attorney signs and files pleadings on behalf of an entity, those pleadings are subject to dismissal based on the filer's unauthorized practice of law).

**{¶ 4}** Huelsman filed a response to the show cause order on October 22, 2015. He argues that he is a "private prosecutor" under the terms of a contract, and therefore

cannot be declared a vexatious litigator. He also argues that the vexatious litigator designation only applies to criminal, not civil cases. Finally, Huelsman asserts that this court lacks subject matter jurisdiction and appears to indicate that this case should be dismissed for that reason. He signed the show cause response as "Private Prosecutor."

**{¶ 5}** Huelsman directs this court to an operating agreement attached to his petition, under which he claims the ability to "[i]nstitute, prosecute, and defend any proceeding in the Company's name." He reads this provision in conjunction with R.C. 2733.04, which allows a "prosecuting attorney" to commence an action in quo warranto. Huelsman appears to argue that these provisions create an exception to the vexatious litigator statute for prosecutors, which applies to him as a private prosecutor.

**{¶ 6}** We disagree. The vexatious litigator statute is clear: a person, having been designated a vexatious litigator by a court, must ask for leave to institute any legal proceedings. Huelsman, who is neither an attorney nor a "prosecuting attorney" as defined in Ohio law, has been designated a vexatious litigator. *Nasal v. Huelsman, supra*; *see* R.C. Chapter 309 (concerning prosecuting attorneys). He is required to seek leave to institute proceedings before this court, and this court is required to dismiss his petition if he does not. R.C. 2323.52(I); *State ex rel. Sapp v. Franklin Cty. Court of Appeals*, 118 Ohio St.3d 368, 2008-Ohio-2637, 889 N.E.2d 500, ¶ 27.

**{¶ 7}** Huelsman acknowledges the designation in *Nasal v. Huelsman*, but asserts that the Miami County Common Pleas Court's finding only applies to criminal cases because the statute is found in the criminal code. The vexatious litigator statute makes no such distinction:

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 or another person in a court of appeals without first obtaining leave of the court of appeals to proceed pursuant to division (F)(2) of this section.

(Emphasis added.) R.C. 2323.52(D)(3). The Supreme Court of Ohio has confirmed that the statute bars vexatious litigators from filing civil actions without leave, including original actions in appellate courts. *See, e.g., Baumgartner v. Duffey*, 121 Ohio St.3d 356, 2009-Ohio-1218, 904 N.E.2d 534, ¶ 3 (affirming dismissal of habeas corpus action because petitioner was vexatious litigator who had not sought leave to file). The statute likewise bars Huelsman from filing this original action without leave.

**{¶ 8}** Huelsman also appears to argue that this court lacks subject matter jurisdiction over his original action. We note that this court has jurisdiction over quo warranto actions pursuant to Article IV, Section 3(B)(1)(a) of the Ohio Constitution. We therefore have jurisdiction to dismiss the petition pursuant to R.C. 2323.52(I), as described above. We conclude that Huelsman has not satisfied the first part of this court's show cause order.

**{¶ 9}** We also conclude that Huelsman has not satisfied the second part of our show cause order concerning his apparent unauthorized practice of law. Huelsman argues that he is authorized by the operating agreement to take any action necessary to

carry out the terms of the agreement. The relevant inquiry, however, is whether Huelsman has been authorized by the Supreme Court of Ohio to practice law.

**{¶ 10}** "The unauthorized practice of law is the rendering of legal services for another by any person not admitted to practice in Ohio." *Disciplinary Counsel v. Kafele*, 108 Ohio St.3d 283, 2006-Ohio-904, 843 N.E.2d 169, ¶ 14, citing Gov.Bar R. VII(2)(A). Ordinarily, when a non-attorney signs and files pleadings on behalf of another, those pleadings are subject to dismissal based on the filer's unauthorized practice of law. *Worthington City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 85 Ohio St.3d 156, 160-161, 707 N.E.2d 499 (1999). *See also* R.C. 4705.01 (prohibiting the practice of law "unless the person has been admitted to the bar by order of the supreme court").

**{¶ 11}** "The practice of law is not limited to appearances in court. It also embraces the preparation of papers that are to be filed in court on another's behalf." *Toledo Bar Assn. v. Joelson*, 114 Ohio St.3d 425, 2007-Ohio-4272, 872 N.E.2d 1207, ¶ 6. Here, although somewhat unclear, Huelsman filed the petition and amended petition for writ of quo warranto as statutory agent and executor of Creative Construction Services LLC. "By preparing legal papers to be filed in court on behalf of [the] L.L.C., therefore, [he] engaged in the unauthorized practice of law." *Kafele* at ¶ 15. The fact that Huelsman is a statutory agent or member of the limited liability company does not authorize his actions. *Id*. at ¶ 18. The Supreme Court of Ohio has explicitly rejected such an argument:

> To justify his actions, respondent asserted at oral argument that he was a member of this limited-liability company and that he was therefore able to represent and protect his personal interest in the Bankers Trust case as a lienholder. His argument fails to account for the fact that *a limited-liability*

> *company exists as a separate legal entity*, R.C. 1705.01(D)(2)(e), and *may be represented in court only by a licensed attorney*. *See Union Sav. Assn. v. Home Owners Aid, Inc.*, 23 Ohio St.2d at 64, 52 O.O.2d 329, 262 N.E.2d 558. *See, also, Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, 832 N.E.2d 1193, syllabus (A layperson may not engage in cross-examination, argument, or other acts of advocacy on behalf of a limited-liability company).

(Emphasis added.) *Kafele* at ¶ 18.

**{¶ 12}** We conclude that Huelsman has not satisfied our show cause order. We therefore DISMISS this quo warranto action.

SO ORDERED.

JEFFREY E. FROELICH, Presiding Judge

MARY E. DONOVAN, Judge

MICHAEL T. HALL, Judge

To The Clerk: Within three (3) days of entering this judgment on the journal, you are directed to serve on all parties not in default for failure to appear notice of the judgment and the date of its entry upon the journal, pursuant to Civ.R. 58(B).

JEFFREY E. FROELICH, Presiding Judge

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