

[Cite as *State ex rel. Bozsik v. Neal*, 2010-Ohio-5653.]

COURT OF APPEALS
RICHLAND COUNTY, OHIO
FIFTH APPELLATE DISTRICT

STATE OF OHIO ex rel.
STEVEN A. BOZSIK

Relator

-vs-

TIM NEAL, et al.

Respondents

JUDGES:

Hon. Julie A. Edwards, P. J.
Hon. John W. Wise, J.
Hon. Patricia A. Delaney, J.

Case No. 10 CA 81

OPINION

CHARACTER OF PROCEEDING:

Complaint in Mandamus

JUDGMENT:

Dismissed

DATE OF JUDGMENT ENTRY:

November 18, 2010

APPEARANCES:

For Relator

For Respondents

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Wise, J.

{¶1} Relator, Steven A. Bozsik, has filed a Complaint in Mandamus against three respondents. Those respondents are Tim Neal, the Clerk of the Wayne County Court of Common Pleas, Margaret Bradshaw, Warden of the Richland Correctional Institution, and Kathy Fortney, Clerk of the Medina County Court of Common Pleas. Respondents Neal and Fortney have filed motions to dismiss the instant complaint because Relator has been declared to be a vexatious litigator. Relator has filed responses in opposition to the motions to dismiss. Respondent Bradshaw has filed an answer to the complaint. We find Respondent Fortney's motion to dismiss to be well taken and find it to be dispositive of the instant case.

{¶2} Relator was declared to be a vexatious litigator in Case Number 04 CIV 0286 in the Medina County Court of Common Pleas. Relator argues because the entry does not specifically prohibit Relator from filing any cause of action in a court of appeals, he is not required to seek leave prior to filing a case with a court of appeals.

{¶3} R.C. 2323.52 governs vexatious litigators. Section R.C. 2323.52(D)(3) relates to cases filed by a vexatious litigator in a court of appeals and provides,

{¶4} "(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 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."

{¶15} R.C. 2323.52(F)(2) prohibits Relator from filing anything in the court of appeals except an application for leave. This section provides in part,

{¶16} “(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. . .” R.C. § 2323.52.

{¶17} The order entered by the Medina County Court of Common Pleas is an order entered pursuant to R.C. 2323.52(D)(1) which provides,

{¶18} “(D)(1) If the person alleged to be a vexatious litigator is found to be a vexatious litigator, subject to division (D)(2) of this section, the court of common pleas may enter an order prohibiting the vexatious litigator from doing one or more of the following without first obtaining the leave of that court to proceed:

{¶19} “(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

{¶10} “(b) Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts specified in division (D)(1)(a) of this section prior to the entry of the order;

{¶11} “(c) Making any application, other than an application for leave to proceed under division (F)(1) of this section, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section.” R.C. § 2323.52.

{¶12} The Medina County Court of Common Pleas order mirrors the language of R.C. 2323.52(D)(1) and is an order issued pursuant to R.C. 2323.52(D)(1). Because Relator is subject to an order issued pursuant to section (D)(1), he is prohibited by sections (D)(3) and (F)(2) from filing anything other than an application for leave.

{¶13} Relator did not first seek leave to file the instant cause of action, therefore, this cause is dismissed.

{¶14} CAUSE DISMISSED.

{¶15} COSTS TO RELATOR.

{¶16} IT IS SO ORDERED.

By: Wise, J.

Edwards, P. J., and

Delaney, J., concur.

JUDGES

