

[Cite as *Johnson v. Gallagher*, 2009-Ohio-5385.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 93009

CINSEREE JOHNSON

RELATOR

VS.

EILEEN A. GALLAGHER

RESPONDENT

**JUDGMENT:
COMPLAINT DISMISSED**

WRIT OF PROHIBITION
MOTION NOS. 420164 and 421839
ORDER NO. 426683

RELEASE DATE: October 6, 2009

FOR RELATOR

Cinseree Johnson, pro se
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ATTORNEYS FOR RESPONDENT

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Cuyahoga County Prosecutor

BY: Frederick W. Whatley
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JAMES J. SWEENEY, J.:

{¶ 1} This action in prohibition arises out of *Haut v. Norman*, Cuyahoga County Court of Common Pleas Case No. CV-667337. Relator, Cinseree Johnson (aka Cindy Johnson), is the fiduciary of the Estate of Matthew Norman which is a party to Case No. CV-667337. She requests that this court issue a writ of prohibition preventing respondent judge from permitting Terrence Kenneally to represent Johnson in Case No. CV-667337. While this action has been pending, Case No. CV-667337 was settled and dismissed.

{¶ 2} On September 17, 2008, and prior to the filing of this action, Judge Michael Ward of the Athens County Court of Common Pleas held that relator was

a vexatious litigator. *Johnson v. Pyle*, Athens Cty. Court of Common Pleas Case Nos. 08CI303 and 08CI305. In this action, after respondent filed a motion to dismiss and for summary judgment, relator filed a notification of complaint for writ of mandamus in the Supreme Court of Ohio. Johnson requested the Supreme Court to compel Judge Ward to strike the entry finding her a vexatious litigator. The Supreme Court of Ohio dismissed the action in mandamus. *State ex rel. Johnson v. Ward*, 121 Ohio St.3d 1470, 2009-Ohio-2045, 905 N.E.2d 651.

{¶ 3} In *Baumgartner v. Duffey*, 121 Ohio St.3d 356, 2009-Ohio-1218, 904 N.E.2d 534, the petitioner, Elsebeth Baumgarnter, brought an action in habeas corpus in the Court of Appeals for Union County. The court of appeals dismissed the petition in habeas corpus and the Supreme Court affirmed. “Baumgartner was declared a vexatious litigator in 2004. See <http://www.supremecourt.ohio.gov./Clerk/vexatious>. Thus, she could not ‘institute legal proceedings in a court of appeals * * * without first obtaining leave of the court of appeals to proceed’ in accordance with the vexatious-litigator statute. R.C. 2323.52(D)(3). She did not obtain leave of the court of appeals to proceed before she filed her habeas corpus petition. Once Baumgartner apprised the court of appeals of her status as a vexatious litigator, the court should have dismissed the cause without addressing the merits of her habeas corpus claim. See 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.” Id. at ¶3. Compare

Grundstein v. Carroll, Cuyahoga App. No. 86604, 2006-Ohio-2215 (approximately six months after the court of common pleas declared the relator a vexatious litigator, he had not sought leave to proceed in the court of appeals and the court dismissed his action in mandamus and prohibition sua sponte).

{¶ 4} Johnson remains a vexatious litigator. See <http://www.supremecourt.ohio.gov/Clerk/vexatious>. Johnson has not sought the permission of this court to proceed. In light of *Baumgartner*, therefore, we must dismiss this action.

{¶ 5} Accordingly, respondent's motion to dismiss and for summary judgment is granted. Relator to pay costs. The clerk is directed to serve upon the parties notice of this judgment and its date of entry upon the journal. Civ.R. 58(B).

Complaint dismissed.

JAMES J. SWEENEY, JUDGE

ANN DYKE, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR