

[Cite as *Grunstein v. eWolf's Corp.*, 2015-Ohio-2163.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
No. 102384

ROBERT GRUNDSTEIN

PLAINTIFF-APPELLANT

vs.

EWOLF'S CORPORATION, ET AL.

DEFENDANTS-APPELLEES

JUDGMENT:
DISMISSED

Civil Appeal from the
Cuyahoga County Court of Common Pleas
Case No. CV-03-513849

BEFORE: Keough, P.J., McCormack, J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 4, 2015

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KATHLEEN ANN KEOUGH, P.J.:

{¶1} This cause came to be heard upon the accelerated calendar pursuant to App.R. 11.1 and Loc.R. 11.1. The purpose of an accelerated appeal is to allow the appellate court to render a brief and conclusory opinion. *Crawford v. Eastland Shopping Mall Assn.*, 11 Ohio App.3d 158, 463 N.E.2d 655 (10th Dist.1983); App.R. 11.1(E).

{¶2} Plaintiff-appellant, Robert Grundstein, appeals from the trial court's decision denying his motion for relief from judgment and request for a new hearing with a judge from a different county. For the reasons that follow, we dismiss the appeal on the grounds of res judicata.

{¶3} The underlying civil action in this case began in November 2003 when Grundstein filed an amended complaint against George Bielert, eWolf's Gallery, Inc., and Wolf's Gallery, Inc., regarding claims arising out of a consignment contract assigned to him by his mother. Even though Bielert was dismissed from the action pursuant to Civ.R. 12(B)(6) and the dismissal was upheld by this court in *Grundstein v. Ewolf's Corp.*, 8th Dist. Cuyahoga No. 84149, 2004-Ohio-4761, Grundstein continued litigating the action against Bielert. As a result, Bielert moved the trial court to sanction Grundstein and to declare him a "vexatious litigator" pursuant to R.C. 2323.52.

{¶4} Following a September 2005 hearing, the trial court issued an opinion on October 12, 2005, declaring Grundstein a vexatious litigator pursuant to R.C. 2323.52. Grundstein filed an untimely appeal with this court, and thus the appeal was dismissed. *Grundstein v. Ewolf's Corp., et al.*, 8th Dist. Cuyahoga No. 87313 (Nov. 21, 2005). Grundstein did not appeal this decision.

{¶5} Thereafter, Grundstein relentlessly attempted to revisit the trial court's vexatious litigator declaration through an onslaught of filings — request for relief from judgment (filed December 27, 2005), motion to reconsider (filed June 14, 2006), Ohio Civ.R. 60 motion for relief from judgment under R.C. 2323.52 based on new case law (filed September 4, 2008), motion to vacate order (filed September 30, 2008), motion to vacate judgment under Ohio Civ.R. 60(B)(4) and (5) (filed June 4, 2010), motion to modify order (filed September 2, 2010), motion to vacate (filed December 13, 2010), motion for leave to proceed and file declaratory relief (filed August 19, 2011), motion for leave to proceed to file declaratory relief (filed December, 5, 2011), motion for leave to proceed to file complaint and request end of filing restrictions (filed January 9, 2012), and motion for leave to proceed to terminate filing restrictions (filed January 13, 2012). The trial court denied each attempt to readdress this issue.

{¶6} Additionally, Grundstein filed multiple original actions in this court, the Ohio Supreme Court, and in federal court requesting relief from the vexatious litigator declaration. Each court has denied him relief, and as a result of the filings, the Ohio Supreme Court and the federal courts declared Grundstein to be a vexatious litigator. *See, e.g., State ex rel. Grundstein v. Court of Appeals*, 121 Ohio St.3d 494, 2009-Ohio-2511, 907 N.E.2d 320; *Grundstein v. Eighth District Court of Appeals*, 6th Cir. No. 10-3109 (Nov. 1, 2011), *cert. denied*, ___ U.S. ___, 132 S.Ct.2695, 183 L.Ed.2d 46 (2012).

{¶7} In January 2014, Grundstein filed a document titled, "Preliminary Statement/Leave to Proceed Granted by J. Mason/Case Transferred from J. Donnelly to J.

Mason.” Contained within this document was a “Complaint for Declaratory Relief” that named the Cuyahoga County Clerk of Court as a defendant. While there is some debate whether Grundstein obtained leave to pursue this purported declaratory judgment action, the record shows that his action was merely another attempt to vacate the trial court’s October 12, 2005 order declaring Grundstein to be a vexatious litigator.

{¶8} Believing this filing constituted a new action, Grundstein filed both motions for default judgment and for summary judgment on this declaratory judgment complaint. On June 4, 2014, the trial court denied both motions, reiterating that Grundstein remained a vexatious litigator pursuant to R.C. 2323.52. Subsequently, Grundstein moved the court for relief from the June 4, 2014 judgment and requested a hearing from a judge in a different county. In October 2014, the court denied the motion, again confirming that Grundstein was a vexatious litigator pursuant to R.C. 2323.52.

{¶9} It is from this October decision that Grundstein was granted leave by this court to file an appeal wherein he raises the following assignments of error:

1. It was [e]rror of [l]aw when the lower court did not strike Grundstein’s vexatious status [sic] under ORC 2323.52 from the court record. Errors of Law are reviewed De Novo, “*In re A.J.S.*”, 120 Ohio St.3d 185, 2008-Ohio-5307 [sic].
2. There was no [s]ubstantial [e]vidence to deny [d]efault [j]udgment on Grundstein’s unopposed motion. He was the only one to meet the burden of production.
3. There were sufficient procedural, constitutional and jurisdictional defects to provide a “fact” basis for default judgment in the lower court and to claim otherwise is error.

{¶10} Notwithstanding Grundstein’s failure to comply with App.R. 12 and 16 by

failing to separately identify and argue each assignment of error, we find that after a thorough review of record and dissecting the arguments Grundstein raises, the doctrine of res judicata precludes Grundstein's appeal of this matter.

{¶11} Res judicata operates “to preclude the relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction.” *Consumers' Counsel v. Pub. Util. Comm.*, 16 Ohio St.3d 9, 10, 475 N.E.2d 782 (1985). The res judicata doctrine bars all claims that might have been litigated in the first action as well as those actually litigated. *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 653 N.E.2d 226 (1995). The purpose of res judicata is to deter the repeated litigation of resolved issues, thereby ensuring finality in judgments and the conservation of judicial resources. *Kelm v. Kelm*, 92 Ohio St.3d 223, 227, 749 N.E.2d 299 (2001).

{¶12} In this case, Grundstein sought relief from the trial court's June 2014 judgment entry that denied his motions for default judgment and summary judgment. The motions for default judgment and summary judgment were based on whether the trial court's order declaring him a vexatious litigator in 2005 was in compliance with R.C. 2323.52. Grundstein's motion for relief from that judgment merely challenged the trial court's original October 12, 2005 order. Because Grundstein's arguments have been repeatedly rejected, the trial court properly denied Grundstein the relief he requested.

{¶13} This appeal is another attempt by Grundstein to relitigate the final judgment declaring him a vexatious litigator. The proper time to challenge this declaration was by way of direct appeal. *Karnofel v. Girard Police Dept.*, 11th Dist. Trumbull No.

2009-T-0045, 2009-Ohio-4446, ¶ 10 (a motion for relief from judgment, Civ.R. 60, cannot be used as a substitute for appeal). The judgment declaring Grundstein to be a vexatious litigator became final and conclusive in 2005 when this court dismissed Grundstein's untimely appeal and he did not further appeal that ruling. Therefore, his repeated and relentless collateral attacks on the trial court's declaration are barred by res judicata. See *Trumbull Mem. Hosp. v. Karnofel*, 11th Dist. Trumbull No. 2009-T-0043, 2009-Ohio-4095, ¶ 8; *Trumbull Memorial Hosp. v. Karnofel*, 11th Dist. Trumbull No. 2009-T-0101, 2010-Ohio-1269, ¶ 10 (subsequent challenges to a vexatious litigator declaration will be barred by res judicata).

{¶14} Accordingly, Grundstein's assignments of error are overruled.

{¶15} The appeal is dismissed.

It is ordered that appellees recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KATHLEEN ANN KEOUGH, PRESIDING JUDGE

TIM McCORMACK, J., and
SEAN C. GALLAGHER, J., CONCUR