

Montgomery County Common Pleas Court  
General Division

IN THE COMMON PLEAS COURT OF MONTGOMERY COUNTY, OHIO  
CIVIL DIVISION

MONTGOMERY COUNTY PROSECUTING  
ATTORNEY,

CASE NO.: 2025 CV 02403

Plaintiff(s),

JUDGE MARY WISEMAN

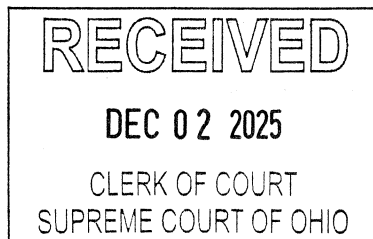
-VS-

DEREK FOLLEY,

Defendant(s).

**FINAL AND APPEALABLE DECISION,  
ORDER, AND ENTRY GRANTING  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT**

**ORDER AND ENTRY DECLARING  
DEFENDANT DEREK FOLLEY A  
VEXATIOUS LITIGATOR UNDER R.C.  
2323.52**



**ORDER DIRECTING MONTGOMERY  
COUNTY CLERK OF COURTS TO SEND  
A CERTIFIED COPY OF THIS  
DECISION TO THE SUPREME COURT  
OF OHIO FOR PUBLICATION**

This matter is before the Court on Plaintiff's Motion for Summary Judgment, filed by Plaintiff Montgomery County Prosecuting Attorney Mathias H. Heck, Jr. ("Prosecutor") on September 23, 2025. *See* Docket. Pursuant to Civ.R. 6(C)(1), self-represented Defendant Derek Folley ("Folley") had until October 21, 2025 to file a memorandum in opposition to Plaintiff's Motion for Summary Judgment. *See* Civ.R. 6(C)(1); *see also Decision*, filed 08/11/25, at 4 (wherein this Court notified the parties that it would adhere to the filing deadlines set forth in Civ.R. 6(C)(1)). No response was timely filed by Folley, nor did he seek an extension of time to respond to the Prosecutor's motion. *See* Docket.

This matter is now properly before the Court. For the reasons that follow, the Court hereby grants Plaintiff's Motion for Summary Judgment and declares Folley a vexatious litigator.

## FACTS AND PROCEDURAL HISTORY

The Court finds a brief recitation of the procedural history to be relevant to the Prosecutor's vexatious litigator claim. This action originated with the Complaint to Declare Derek Folley a Vexatious Litigator ("Complaint"), filed by the Prosecutor on April 17, 2025. *See* Docket. Therein, the Prosecutor references numerous unsuccessful appeals, motions, extraordinary writs, and other legal actions brought by Folley in both state court and federal court in support of his assertion that Folley has engaged in vexatious conduct that is habitual, persistent, and without reasonable grounds, and the Prosecutor requests the Court declare Folley a vexatious litigator under R.C. 2323.52. *See generally* *Compl.*

Folley was served with a copy of the Complaint on or about May 6, 2025. *See* Docket. On May 9, 2025, Folley filed his Motion for an Extension of Time in Pursuant [sic] to July 2, 2025 for Medical Reasons ("First Motion for Extension of Time"). *Id.* Therein, Folley indicated that he could not sit for long periods of time due to back pain and indicated that he needed additional time to respond to the Complaint. *First Mot. Ext. Time* at 4 (unnumbered). Despite his assertion that he was unable to respond due to ongoing medical issues, Folley then filed several motions in the weeks following his initial request for extension of time, including: (1) Motion for Discovery in Pursuant [sic] to Transcripts and Legal Pleadings of Cases in Question ("Motion for Discovery"), filed on May 14, 2025; (2) The Defendant's Motion to Dismiss the Complaint ("Motion to Dismiss"), filed on May 20, 2025; and (3) Motion for an Enlargement of Time to Respond to the Plaintiff[s] Legal Pleadings ("Second Motion for Extension of Time"), filed on May 28, 2025. *See* Docket. In its decisions filed on May 27, 2025 and May 29, 2025, this Court granted Folley an extension of time until July 2, 2025 to file any reply memoranda in support of his Motion to Dismiss and Motion for Discovery.<sup>1</sup> *Id.* In both decisions, the Court informed Folley that he was not required to move or plead in response to the Complaint until after the Court resolved his pending Motion to Dismiss. *See Decision*, filed 05/27/25, at 2; *Decision*, filed 05/29/25, at 1.

Thereafter, on July 3, 2025, one day after the deadline for Folley's replies as previously set by the Court, Folley filed his Motion for an Extension of Time to August 3, 2025 as a Result of a Glitch at the G.C.I.

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<sup>1</sup> The Prosecutor timely filed his Plaintiff's Memorandum Contra Defendant's Motion for Discovery and Plaintiff's Memorandum Contra Defendant's Motion to Dismiss, which were separately filed on May 21, 2025. *See* Docket.

Law Library Printout (“Third Motion for Extension of Time”).<sup>2</sup> *See* Docket. On July 8, 2025, this Court granted Folley’s Third Motion for Extension of Time and set a new deadline of August 4, 2025 for the filing of any reply memoranda in support of Folley’s motions. *Decision*, filed 07/08/25, at 1-2. The Court further informed Folley that no further extensions of time would be granted. *Id.* Folley then filed his The Defendant’s Motion for Definite Statement Relating to the Cases of the Complaint (“Motion for a Definite Statement”) on July 14, 2025. *See* Docket. On July 15, 2025, the Court denied Folley’s Motion for a Definite Statement. *Id.* Thereafter, despite the Court’s repeated instruction that Folley was not required to move or plead until the Court resolved his pending 12(B) motion, Folley filed his The Defendant’s Answer to the Plaintiff’s Complaint (“Answer”) on July 22, 2025. *Id.* Despite being granted numerous extensions of time, Folley did not file any reply memoranda in support of his then pending motions. *Id.* Subsequently, on August 11, 2025, the Court rendered its decision denying Folley’s Motion for Discovery and Motion to Dismiss, and the Court accepted as filed Folley’s Answer. *See generally Decision*, filed 08/11/25.

In its Plaintiff’s Motion for Summary Judgment, the Prosecutor states as follows regarding Folley’s history of initiating meritless legal proceedings, as well as his actions in the instant matter:

Since being convicted in 2021 on three counts of unlawful sexual conduct with a minor, Derek Folley has filed eight appeals with Ohio’s Second District Court of Appeals, three with Ohio’s Ninth District Court of Appeals, and one with Ohio’s First District Court of Appeals; initiated four appeals in the Supreme Court of Ohio and pursued a writ of mandamus in that court against a trial court judge; filed multiple actions in federal court, including the United States District Courts for the Northern District of Ohio, the Southern District of Ohio, the Southern District of California, the Central District of California, five appeals in the United States Court of Appeals for the Sixth Circuit, and one in the Ninth Circuit; along with countless motions, petitions, pleadings, notices, and other indecipherable documents with the Montgomery County Common Pleas Court. Virtually every motion, pleading, appeal, or lawsuit filed by Folley has been resolved against him by the state and federal courts. Each of his filings have advanced substantially the same claims and have been repeatedly deemed meritless. For that reason, Plaintiff filed on April 17, 2025, a Complaint to have Folley declared a vexatious litigator under R.C. 2323.52.

Instead of addressing the averments set forth in Plaintiff’s Complaint, Folley filed a motion for discovery on May 14, 2025; a motion to dismiss on May 20, 2025; and a motion for definite statement on July 14, 2025. After considerable delay, Folley finally filed his Answer to the Complaint on July 22, 2025. Folley’s Answer, however, does not negate what Plaintiff alleges in his Complaint: Derek Folley is a vexatious litigator

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<sup>2</sup> The exhibit referenced in Folley’s Third Motion for Extension of Time was separately docketed on July 11, 2025. *See* Docket.

*Pl. 's Mot. Summ. J.* at 2. The Prosecutor argues that there remains no genuine issue of material fact and that it is entitled to judgment as a matter of law on its claim that Folley be deemed a vexatious litigator under R.C. 2323.52. *Id.* at 3. Although Folley asserted in his answer that he did not intend to harass anyone or cause delay by his filings, the Prosecutor points out that Folley did not deny that his conduct was “not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.” *Id.* at 3-4, quoting R.C. 2323.52(A)(2)(b).

The Prosecutor further provides a non-exhaustive summary of what he considers to be Folley's vexatious conduct in filing multiple meritless appeals and motions, in addition to other unsuccessful legal actions, including: (1) *State v. Dixon*, Montgomery C.P. No. 2019 CR 1878; (2) *State v. Folley*, 2d Dist. No. CA 28694; (3) *State v. Folley*, 2d. Dist. No. CA 29142; (4) *State v. Folley*, Sup.Ct. No. 2021-1054; (5) *State v. Folley*, 2d Dist. No. CA 29150; (6) *State v. Folley*, 2d Dist. No. 29188; (7) *State v. Folley*, 2d Dist. No. 30061; (8) *State v. Folley*, Sup.Ct. No. 2024-729; (9) *State v. Folley*, 2d Dist. No. 30173; (10) *State v. Folley*, 2d Dist. No. 30185; (11) *State v. Folley*, 2d Dist. No. 30320; (12) *State v. Folley*, Sup.Ct. No. 2025-185; (13) *State v. Folley*, Sup.Ct. No. 2025-187; (14) *State ex rel. Mr. Derek Folley v. Judge Mary Montgomery*, Sup.Ct. No. 2025-092; (15) *Folley v. Gorman et al.*, S.D. Cal. No. 3:21-cv-01887; (16) *Folley v. Gorman, et al.*, 9th Cir. No. 22-55178; (17) *Folley v. Gorman et al.*, S.D. Ohio No. 3:21-cv-016; (18) *Folley v. Magistrate Judge Michael Merz, et al.*, N.D. Ohio No. 1:23-cv-1016; (19) *Folley v. Sr. Judge McKeague*, N.D. Ohio No. 1:23-cv-1304; (20) *Folley v. Banks, et al.*, S.D. Ohio No. 1:20-cv-177; (21) *Folley v. Banks*, 1st Dist. No. C-2000197; (22) *Folley v. Judge Denise Cross, et. al.*, C.D. Cal. No. 2:21-cv-0877; (23) *Folley v. Warden*, N.D. Ohio No. 1:21-cv-2340; (24) *In re Derek Folley*, 6th Cir. No. 22-3200; (25) *Folley v. Warden*, 6th Cir. No. 22-3734; (26) *Folley v. Warden*, 6th Cir. No. 22-3755; (27) *Folley v. Warden*, 6th Cir. No. 22-3757; (28) *Folley v. Warden*, S.D. Ohio No. 3:22-cv-065; (29) *Folley v. Warden*, 6th Cir. No. 22-4041; (30) *State ex rel. Folley v. Graton Correctional Institution*, 9th Dist. No. 23CA12040; (31) *Folley v. Keith J. Folley, Warden*, 9th Dist. No. 23CA12041; and (32) *Folley v. Chambers-Smith et al.*, 9th Dist. No. 24CA12077. *Pl. 's Mot. Summ. J.* at 4-32. The Prosecutor thus requests the Court enter judgment in its favor and declare Folley a vexatious litigator. *Id.* at 32.

## LAW AND ANALYSIS

### **A. Summary Judgment – Civ.R. 56**

In accordance with Civ.R. 56, summary judgment is appropriate when “(1) there is no genuine issue as to any material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds, after construing the evidence most strongly in favor of the nonmoving party, can only conclude adversely to that party.” *Heard v. Dayton View Commons Homes*, 2018-Ohio-606, ¶ 7 (2d Dist.), citing *Zivich v. Mentor Soccer Club, Inc.*, 82 Ohio St.3d 367, 369-370 (1998). ““Before ruling on a motion for summary judgment, the trial court’s obligation is to read the evidence most favorably for the nonmoving party to see if there is a “genuine issue of material fact” to be resolved. Only if there is none does the court then decide whether the movant deserves judgment as a matter of law.”” *Algren v. Algren*, 2009-Ohio-3009, ¶ 24 (2d Dist.) (internal citation omitted). Thus, the main purpose of a motion for summary judgment is to ““enable a party to go behind the allegations in the pleadings and assess the proof in order to see whether there is a genuine need for trial. \* \* \* Consequently, the primary function of a trial court in reviewing a motion for summary judgment is to determine whether triable issues of fact exist, not the sufficiency of those facts.”” *Allstate Ins. Co. v. Pittman*, 2015-Ohio-699, ¶ 22 (2d Dist.) (citation omitted).

In order to prevail on a motion for summary judgment, the moving party carries the initial burden to inform the court of the basis for the motion and to point to parts of the record demonstrating that no genuine issue of material fact exists. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293 (1996). “In the context of summary judgment, the failure to meet one’s burden as to any one of the essential elements can be dispositive.” *Kryder v. Kryder*, 2012-Ohio-2280, ¶ 30 (9th Dist.); *see also Lloyd v. Rogerson*, 2019-Ohio-2606, ¶ 18 (9th Dist.) (“Failure to meet the evidentiary burden on any of the elements will entitle the moving party to judgment as a matter of law.”); *Phillips v. Spitzer Chevrolet Co.*, 2006-Ohio-4701, ¶ 19 (5th Dist.) (“It is axiomatic that failure to prove one element of a cause of action is fatal to a party’s claim.”). The moving party must be able to specifically point to some evidence of the type listed under Civ.R. 56(C) to affirmatively demonstrate that the non-moving party has no evidence to support the non-moving party’s claims. *Vahila v. Hall*, 77 Ohio St. 3d 421, 428 (1997); *see also Civ.R. 56(C)* (“Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written

stipulations of fact \* \* \* show that there is no genuine issue as to any issue of material fact and that the moving party is entitled to judgment as a matter of law.”).

Once the moving party satisfies this burden, in order to avoid a grant of summary judgment, the non-moving party has the reciprocal burden to present evidence to show there is a genuine issue of material fact:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the party’s pleadings, but the party’s response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

Civ.R. 56(E); *see also Jackson v. Alert Fire & Safety Equip., Inc.*, 58 Ohio St. 3d 48, 52 (1991). The non-moving party is not required to “conclusively demonstrate” its case, but must produce enough evidence to show that there remains a genuine issue of material fact. *State ex rel. J.J. Detweiler Ent. v. Warner*, 2004-Ohio-4659, ¶ 14. The non-moving party thus has the burden “‘to produce evidence on any issue for which that party bears the burden of production at trial’ and may not rest upon unsworn or unsupported allegations in the pleadings.” *Heard v. Dayton View Commons Homes*, 2018-Ohio-606, 106 N.E.3d 327, ¶ 8 (2d Dist.). “Although courts are cautioned to construe the evidence in favor of the nonmoving party, summary judgment is not to be discouraged where a non-movant fails to respond with evidence supporting the essentials of his claim.” *Miller v. MetroHealth Med.Ctr.*, 2018-Ohio-1202, ¶ 11 (8th Dist.), quoting *Mayhew v. Massey*, 2017-Ohio-1016, ¶ 11 (7th Dist.).

#### **B. Vexatious Litigator – R.C. 2323.52**

Pursuant to R.C. 2323.52, a “vexatious litigator” is a person who has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, \* \* \*, whether the person or another person instituted the civil action or actions, and whether the vexatious conduct was against the same party or against different parties in the civil action or actions.” R.C. 2323.52(A)(3). Vexatious conduct is further defined as conduct that satisfies any of the following: (1) “The conduct obviously serves merely to harass or maliciously injure another party to the civil action”; (2) “The conduct is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law”; and (3) “The conduct is imposed solely for delay.” R.C. 2323.52(A)(2)(a)-(c). “A person \* \* \* who has defended against habitual and persistent vexatious conduct in the court \* \* \* may commence a civil action in a court of common pleas with jurisdiction over the person who allegedly engaged in the habitual and persistent

vexatious conduct to have that person declared a vexatious litigator.” R.C. 2323.52(B). If a party is determined to be a vexatious litigator, that party must first obtain leave of court to institute new legal proceedings or continue any legal proceedings previously instituted. R.C. 2323.52(D)(1).

In *Davie v. Nationwide Ins. Co. of America*, the Eighth District Court of Appeals further elaborated on the trial court’s standard of review in a vexatious litigator action:

As the Ohio Supreme Court explained in *Mayer v. Bristow*, 91 Ohio St.3d 3, 740 N.E.2d 656 (2000):

“The purpose of the vexatious litigator statute is clear. It seeks to prevent abuse of the system by those persons who persistently and habitually file lawsuits without reasonable grounds and/or otherwise engage in frivolous conduct in the trial courts of this state. Such conduct clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources — resources that are supported by the taxpayers of this state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation.”

*Id.* at 13, quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998). “It is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle, the same unwarranted complaint that cannot be supported by any recognizable good-faith argument.” *Hull v. Sawchyn*, 145 Ohio App.3d 193, 197, 762 N.E.2d 416 (8th Dist.2001).

It is the “nature of the conduct, not the number of actions,” that determines whether a person is a “vexatious litigator.” *Prime Equip. Grp., Inc. v. Schmidt*, 2016-Ohio-3472, 66 N.E.3d 305, ¶ 40 (10th Dist.), quoting *Borger v. McErlane*, 1st Dist. Hamilton No. 010262, 2001-Ohio-4030. “Whether undertaken in an array of cases or in a single action, the consistent repetition of arguments and legal theories that have been rejected by the court numerous times can constitute vexatious litigation.” *Prime Equip. Grp.* at ¶ 40.

In determining whether a party is a vexatious litigator, the trial court may consider the party’s conduct in other, older cases as well as his or her conduct in the case in which the vexatious litigator claim is brought. *See, e.g., Catudal v. Netcare Corp.*, 10th Dist. Franklin No. 15AP-133, 2015-Ohio-4044, ¶ 8; *see also Prime Equip. Grp.*, 2016-Ohio-3472, 66 N.E.3d 305, at ¶ 20 (finding no “restriction” on the trial court’s reliance on conduct occurring in cases that terminated more than one year before plaintiff filed its vexatious litigator complaint in determining that party was a vexatious litigator); *Buoscio v. Macejko*, 7th Dist. Mahoning No. 00-CA-00138, 2003-Ohio-689, ¶ 33 (“Under R.C. 2323.52(A)(3), a person’s behavior in prior civil actions can also form the basis for declaring him a vexatious litigator.”); *Georgiadis v. Dials*, 10th Dist. Franklin No. 99AP-232, 1999 Ohio App. LEXIS 5848, \*9-\*10 (Dec. 9, 1999) (affirming trial court’s decision to declare appellant a vexatious litigator where her vexatious conduct was demonstrated by her actions in both the current action and prior actions).

Where a vexatious litigator claim is based on conduct in multiple cases, the party bringing the vexatious litigator claim need not have been a party to all of the cases relied upon which they rely. A vexatious litigator claim may be supported by evidence of the alleged vexatious litigator’s vexatious conduct in other actions to which the person bringing the vexatious litigator claim was not a party. *See, e.g., Prime Equip. Grp.*, 2016-Ohio-3472, 66 N.E.3d 305, at ¶ 19; R.C. 2323.52(A)(3) (indicating that a vexatious litigation claim may be

based on “conduct \* \* \* against the same party or against different parties in the civil action or actions”); *Ealy*, 2007-Ohio-4080 (evidence of multiple prior court actions instituted by a city commission meeting participant against various city and county employees, all which were found to lack any basis, supported the determination that meeting participant had engaged in “vexatious conduct” under R.C. 2323.52(A)(2) and was a vexatious litigator under R.C. 2323.52(A)(3)).

Summary judgment can be an “appropriate means” of resolving a claim that a party is a vexatious litigator. *Prime Equip. Grp., Inc. v. Schmidt*, 2016-Ohio-3472, 66 N.E.3d 305, ¶ 11 (10th Dist.); *Ealy v. McLin*, 2d Dist. Montgomery No. 21934, 2007-Ohio-4080 (trial court properly granted summary judgment to city and mayor on vexatious litigator counterclaim where there were no genuine issues of material fact regarding whether city commission meeting participant habitually, persistently and without reasonable grounds had engaged in vexatious conduct in the several meritless civil actions he had filed against various city and county employees). However, “[t]here must remain no genuine issue of material fact \* \* \* regarding the nature of the defendant’s conduct and its impact on the cases involved, and the [moving party] must submit appropriate evidence complying with Civ.R. 56.” *Prime Equip. Grp.* at ¶ 11. Where reasonable minds could disagree as to these or other factual issues, summary judgment on a vexatious litigator claim is inappropriate. *See, e.g., Conley v. Smith*, 5th Dist. Stark No. 2004CA00285, 2005-Ohio-1433, ¶ 27-28 (where the issues between the parties are “factually intense” and “lead to the necessity of different interpretations of the facts,” the trial court did not err in denying motion for summary judgment on vexatious litigator claimed but erred in not proceeding with a trial on the matter per the civil rules); *Mansour v. Croushore*, 12th Dist. Butler Nos. CA2008-07-161 and CA2008-07-170, 2009-Ohio-2627, ¶ 50 (trial court did not err in refusing to grant summary judgment on vexatious litigator claim).

“Declaring a plaintiff to be a vexatious litigator is ‘an extreme measure’ that should be granted only ‘when there is no nexus’ between ‘the filings made by the plaintiff[] and [his or her] ‘intended claims.’” *Id.*, quoting *McClure v. Fischer Attached Homes*, 145 Ohio Misc. 2d 38, 2007-Ohio-7259, 882 N.E.2d 61, ¶ 33; *Helfrich v. Madison*, 5th Dist. Licking No. 11 CA 26, 2012-Ohio-551, ¶ 60.

*Davie v. Nationwide Ins. Co. of Am.*, 2017-Ohio-7721, ¶ 39-44 (8th Dist.).

### C. Analysis

As an initial matter, the Court hereby takes judicial notice of Folley’s filings in the proceedings identified above, as these constitute official records from judicial proceedings that are accessible via internet. *See Heck v. Atakpu*, 2024-Ohio-2733, ¶ 20 (2d Dist.) (“we see nothing impermissible about the State’s citing by date each of Atakpu’s filings in his murder case without attaching a paper copy of those filings to its summary-judgment motion. We have recognized that a court may take judicial notice of opinions and records accessible by the internet.”). However, the Court is not considering Folley’s cases before the Supreme Court of Ohio and/or any federal court actions in determining whether to declare him a vexatious litigator, as R.C. 2323.52 focuses on an individual’s conduct in actions before “the court of claims or in a court of appeals, court of common pleas, municipal court, or county court[.]” R.C. 2323.52(A)(3); *see also Caghan v. Caghan*, 2015-



Ohio-1787, ¶ 86 (5th Dist.) (holding that actions filed in federal court cannot be used as evidence in determining whether an individual should be declared a vexatious litigant); *but see Ferrero v. Staats*, 2018-Ohi-3235, ¶ 7 (5th Dist.) (“although civil actions filed in a federal court cannot be the predicate actions for declaring a person a vexatious litigator under R.C. 2323.52, they may have evidentiary relevance for determining vexatious conduct as defined in R.C. 2953.52(A)(2)(a), or to identify a vexatious litigator as defined in R.C. 2953.52(A)(3).”). Additionally, with respect to Folley’s underlying criminal case, the Court is not considering the initial filings prior to Folley’s conviction, nor his direct appeal of this matter. *Watkins v. Pough*, 2017-Ohio-7026, ¶ 41 (11th Dist.). The Court will consider any subsequent motions, appeals, and original actions related to his criminal case, as these filings are deemed matters of a civil nature. *Id.*; *see also State v. Calhoun*, 86 Ohio St.3d 279, 281 (1999) (“postconviction proceeding is not an appeal of a criminal conviction but, rather, a collateral civil attack on the judgment.”).

Based upon a review of Folley’s conduct before the Montgomery County Court of Common Pleas, the Second District Court of Appeals of Ohio, and the Ninth District Court of Appeals of Ohio, including his conduct in the instant action, the Court finds that the Prosecutor has demonstrated that Folley has made numerous unwarranted and frivolous filings. A review of these filings leads to this Court’s conclusion that Folley is a person who has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions \* \* \*.” R.C. 2323.52(A)(3). By continuing to pursue meritless claims after receiving adverse rulings in these actions, Folley’s conduct can only be described as “not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law,” and the Court further finds that Folley’s conduct is imposed solely for delay. *See* R.C. 2323.52(A)(2)(a)-(c). Furthermore, Folley has failed to meet his reciprocal burden under Civ.R. 56(E) of setting forth any evidence to show that there remains a genuine issue of material fact in this regard.

Given the Prosecutor’s overwhelming evidence of Folley’s vexatious conduct, the Court finds that he has proven by a preponderance of the evidence that Folley has habitually, persistently, and without reasonable grounds engaged in vexatious conduct before this court and the state’s courts of appeals. He has habitually, persistently, and without reasonable grounds engaged in conduct that obviously serves merely to harass or maliciously injure those individuals who were involved in his underlying criminal case and incarceration, and/or those judges who have ruled against him, and he has engaged in conduct that is not warranted under

existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. The Court thus finds that the Prosecutor is entitled to judgment as a matter of law on its claim to declare Folley a vexatious litigator under R.C. 2323.52. Accordingly, the Court hereby grants Plaintiff's Motion for Summary Judgment.

As the Court has determined that Folley is a vexatious litigator, the Court further orders, pursuant to R.C. 2323.52, that Derek Folley is hereby prohibited from doing any of the following without first obtaining leave of this Court to proceed:

- (a) Instituting legal proceedings in the court of claims, the court of common pleas, municipal court or county court;
- (b) Continuing any legal proceedings that Folley had instituted in any of the courts specified in section (a) above prior to the entry of this Court's order; and
- (c) Making any application, other than an application for leave to proceed under R.C. 2323.52(F)(1), in any legal proceedings instituted by Folley or another person in any of the courts specified in section (a) above.

R.C. 2323.52(D)(1)(a)-(c). These same three requirements also apply to any legal proceedings before a court of appeals, and Folley will first have to obtain leave of a court of appeals to institute or continue any legal proceedings. R.C. 2323.52(D)(3). In accordance with R.C. 2323.52(E), this order shall remain in force indefinitely. Additionally, pursuant to R.C. 2323.52(H), the Court hereby orders the Montgomery County Clerk of Courts to send a certified copy of this order to the Supreme Court of Ohio for publication.

### **CONCLUSION**

Based on the foregoing analysis, the Court hereby grants Plaintiff's Motion for Summary Judgment. The Court finds that the Prosecutor has demonstrated by a preponderance of the evidence that Defendant Derek Folley is a vexatious litigator pursuant to R.C. 2323.52.

**THIS IS A FINAL APPEALABLE ORDER. IN ACCORDANCE WITH APP.R. 4, ANY PARTY INTENDING TO APPEAL THIS DECISION SHALL FILE A NOTICE OF APPEAL WITHIN THIRTY (30) DAYS.**

**To the Clerk of Courts:**

**Pursuant to Civ.R. 58(B), please serve the attorney for each party and each party not represented by counsel with Notice of Judgment and its date of entry upon the journal.**

SO ORDERED:

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JUDGE MARY WISEMAN

This document is electronically filed by using the Clerk of Courts e-Filing system. The system will post a record of the filing to the e-Filing account "Notifications" tab of the following case participants:

ANDREW T FRENCH  
(937) 225-5757  
Attorney for Plaintiff, Montgomery County Prosecuting Attorney

Copies of this document were sent to all parties listed below by ordinary mail:

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General Division  
Montgomery County Common Pleas Court  
41 N. Perry Street, Dayton, Ohio 45422

**Case Number:**  
2025 CV 02403

**Case Title:**  
MONTGOMERY COUNTY PROSECUTING ATTORNEY vs  
DEREK FOLLEY

**Type:**

Decision

So Ordered,

*May Wiseman*

Electronically signed by mwiseman on 10/27/2025 11:49:29 AM Page 12 of 12

I hereby certify this to be a true and  
correct copy.

Witness my hand and seal this 26  
day of November 2025.

*M. J. Folley*

Clerk of Common Pleas  
Court of Montgomery County, Ohio

By E. P. Dowell  
Deputy



**MIKE FOLEY**

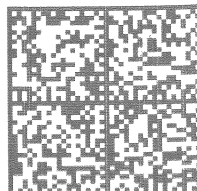
Montgomery County  
Clerk of Courts

*Moving Justice Forward*

41 N Perry Street, Room 106  
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