

**NOTICE: AN ORDER HAS BEEN FILED
IN THE CASE IDENTIFIED BELOW:**

Notice is being mailed by regular mail or by facsimile on or before the 3rd day after the filing date of the entry to each attorney of record or each party with no attorney of record. Notice will not be sent to parties in default for failure to appear.

A copy of the order can be found on our website at www.co.portage.oh.us or contact our office to have a copy emailed for faxed.

Mail to:

SUPREME COURT OF OHIO

Case Number: 2021CV00249

TIMOTHY J HEINZ VS. ERIC N LINDSEY et al

Date entry was filed: MAR 11, 2022 (2) ORDERS

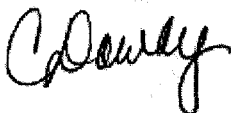
Court of Common Pleas, Portage County, Ravenna, Ohio

FILED
COURT OF COMMON PLEAS
03/11/2022
JILL FANKHAUSER, CLERK
PORTAGE COUNTY, OHIO

Certificate of Service Completed and filed by the Clerk

The notice described above was mailed by ordinary mail or by facsimile to attys/parties by the clerk on MAR 11, 2022.

Jill Fankhauser, Clerk of Courts



Deputy Clerk

cc:

**TIMOTHY J HEINZ
HSBC MORTGAGE SERVICES INC
M & I BANK FSB
PETER C KRATCOSKI
ERIC FINK
LISA M ZARING
ERIC R FINK
MICHAEL A WALTON
DAVID J DIRISAMER
COOPER D BOWEN**

**IRIS JIN
ROBERT C FOLLAND**

RECEIVED
MAR 16 2022
CLERK OF COURT
SUPREME COURT OF OHIO

**IN THE COURT OF COMMON PLEAS
PORTAGE COUNTY, OHIO**

FILED
COURT OF COMMON PLEAS
MAR 11 2022
JILL FANKHAUSER, Clerk
PORTAGE COUNTY, OH

TIMOTHY J. HEINZ)

Plaintiff,)

vs.)

STATE OF OHIO, et al.)

Defendant.)

Case No. 2021 CV 249

Judge Gary L. Yost
by assignment

JUDGMENT ENTRY

**Defendant U.S. Bank Trust, N.A., as Trustee for LSF9 Master
Participation Trust's Motion for Summary Judgment,
filed October 15, 2021**

The Counterclaim of U.S. Bank to declare Mr. Heinz a vexatious litigator:

The Defendant Bank claims that the Plaintiff has frivolously sought to relitigate, in the Portage County Court of Common Pleas and many other forums, the foreclosure judgment obtained against him in 2016. The Defendant bases this claim on the following, all of which is documented in public records of state and federal courts.

1. The final Judgment Entry in the foreclosure case against the Plaintiff was filed on February 2, 2016. On March 30, 2016, The Plaintiff filed a new civil action, No. 2016CV298 in the Portage County Court of Common Pleas, against U.S. Bank questioning the validity and enforceability of the note and mortgage that were the subject of the prior foreclosure case. On

RECEIVED
MAR 16 2022
CLERK OF COURT
SUPREME COURT OF OHIO

January 9, 2017, the Court granted summary judgment to the Defendant Bank, stating that the case was a collateral attack upon a prior final judgment, and that claims for breach of contract, unjust enrichment and declaratory judgment were compulsory counterclaims that should have been presented in that prior case.

2. On March 12, 2020, the Plaintiff did file an appeal from the original judgment of foreclosure, No. 2020-P-0030, which never addressed the merits of the Plaintiff's arguments since it was dismissed on April 13, 2020, because it was not timely. The Plaintiff immediately sought a reconsideration of that decision citing his removal of the foreclosure case to the United States District Court of the Northern District of New York, asserting that it had not been remanded back to the state court. The Court of Appeals noted that the docket of the New York District Court did not show any action pending under Plaintiff's name, and that the case number indicated in Plaintiff's notice of removal was dismissed by the federal court on July 17, 2017, and had nothing to do with the Plaintiff or his property. The appellate court overruled the application for reconsideration.

3. On May 4, 2020, the Plaintiff then filed a Notice of Removal of the original foreclosure case to the United States District Court for the Northern District of Ohio. By Order dated August 27, 2020, the Federal Court remanded the case, ruling that the Plaintiff failed to establish federal subject

matter jurisdiction and his petition for removal was not timely. The Plaintiff also appealed this ruling. On October 21, 2020, the Sixth Circuit Court of Appeals dismissed the appeal.

4. On March 9, 2021, the Plaintiff filed a new civil action in the United States District Court for the Northern District of Ohio, raising many of the same claims that have been asserted in the instant lawsuit, and essentially seeking to invalidate or overturn the original foreclosure case. By Order dated October 22, 2021, the Court meticulously considered whether the Plaintiff's Complaint should be dismissed. The Court determined that the complaint failed to state a plausible claim that the Plaintiff was entitled to relief from the foreclosure judgment; that the federal court had no jurisdiction to review the state court judgment of foreclosure; and that the action involved relitigation of matters already decided in the foreclosure proceeding, and was therefore barred by *res judicata*. The Court granted the Defendant's motion to dismiss.

5. The Complaint in this case was originally filed on April 30, 2021, only a short time after the Complaint was filed in the Northern District of Ohio, and obviously while the federal court case was still pending.

The Plaintiff does not dispute these facts, but denies that he has argued frivolous points, and suggests that "he is a belligerent claimant working to be heard from the viewpoint of true facts."

"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 *311 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." *Mayer v. Bristow*, 91 Ohio St.3d 3, 13, 740 N.E.2d 656 (2000), quoting *Cent. Ohio Transit Auth. v. Timson*, 132 Ohio App.3d 41, 50, 724 N.E.2d 458 (10th Dist.1998). *Prime Equipment Group, Inc., v. Schmidt* ¶13.

O.R.C. §2323.52 provides in pertinent part:

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(b) 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.

(c) The conduct is imposed solely for delay.

(3) "Vexatious litigator" means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court, 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.

It is not clear why the Plaintiff did not pursue a timely appeal in the original foreclosure case. Within thirty days of the final judgment entry in the foreclosure case he did file a separate civil action challenging the note and mortgage on which the foreclosure was based. Summary judgment was

granted in favor of U.S. Bank. The March 12, 2020 appeal filed in the original foreclosure case was well after the final judgment entry. When it was dismissed for being untimely, the Plaintiff sought reconsideration on the grounds he had removed the case to a U.S. District Court in New York and claimed that court had not remanded it. The Court of Appeals found that whatever proceeding had been filed in New York had been dismissed on July 17, 2017. Then on May 4, 2020, the Plaintiff attempted to remove the original foreclosure case to the U.S. District Court for Northern Ohio.

Since the final judgment entry was entered in the foreclosure case, the Plaintiff has instituted three new civil actions, two in the Portage County Court of Common Pleas and one in the Federal District Court, seeking to relitigate issues and claims that were integral to the determination of the prior foreclosure action. Of course, the Plaintiff continues to assert his claims against U.S. Bank Trust, successor to the plaintiff in the prior foreclosure case, and purchaser of the real property in the foreclosure sale. However, in the instant case, the Plaintiff is asserting claims against the entity that purchased the real property from U.S. Bank Trust, and even the lawyer who represented the new property owner in an eviction action against the Plaintiff. The Plaintiff asserted the same claims in his defense against the eviction action. In each case, the Plaintiff's claims have been dismissed or denied for the same reason: they were resolved by, or should have been

raised in, the prior foreclosure case. This conduct by the Plaintiff in these civil actions 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 finds that the Plaintiff has habitually, persistently, and without reasonable grounds engaged in this vexatious conduct in several civil actions, and is therefore a vexatious litigator.

O.R.C. §2323.52 further provides in pertinent part:

(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:

(a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(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;

(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.

(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.

An order finding a person to be a vexatious litigator "shall remain in force indefinitely unless the order provides for its expiration after a specified period of time." See O.R.C. §2323.52(E).

Once a person has been designated to be a vexatious litigator, then such a person may not commence any civil action, or continue any civil action, without obtaining leave of a court. In the case of a person who has been named a vexatious litigator by a court of common pleas, then such a leave must be obtained from the court of common pleas that entered the order naming the person as a vexatious litigator. See O.R.C. §2323.52(D)(1)(c).

Once a court of common pleas has found a person to be a vexatious litigator, then that court shall not grant leave to bring or continue a legal action unless that court is satisfied "that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application." See O.R.C. §2323.52(F)(1).

The clerk of the court which has found a person to be a vexatious litigator shall send a certified copy of the order naming the person as a vexatious litigator to the Supreme Court of Ohio, which keeps a list of persons deemed to be vexatious litigators pursuant to O.R.C. §2323.52(H).

IT IS ORDERED:

1. The Plaintiff, Timothy J. Heinz, is hereby declared a vexatious litigator in the State of Ohio. Timothy J. Heinz is prohibited indefinitely from doing any of the following without first obtaining leave of court to proceed:

a. Instituting any legal proceeding in the court of claims, or in a court of common pleas, municipal court, or county court;

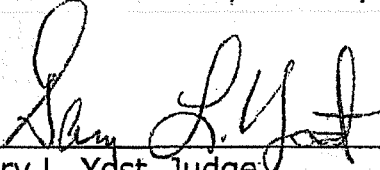
b. Continuing any legal proceeding that he may have instituted in the court of claims, a common pleas court, a municipal court, or a county court prior to the entry of this order; or

c. Making any application, other than application for leave to proceed under O.R.C. §2323.52(F)(1), in any legal proceedings instituted by himself or any other person in the court of claims, any court of common pleas, any municipal court, or any county court.

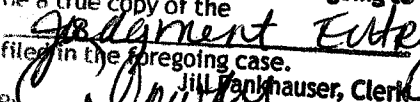
2. This order shall continue indefinitely.

3. The Portage County Clerk of Courts is hereby directed to send a certified copy of this judgment entry to the Supreme Court of Ohio.

4. Costs of this action are taxed to the Plaintiff, Timothy J. Heinz.

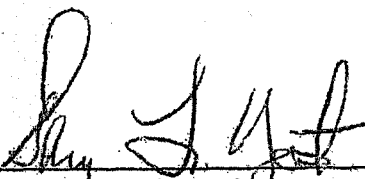


Gary L. Ydst, Judge
by assignment

STATE OF OHIO
PORTAGE COUNTY
I, Jill Fankhauser, Clerk of the Court
of Common Pleas, within and for said
County hereby certify the foregoing to
be a true copy of the
Judgment Entry
filed in the foregoing case.
Jill Fankhauser, Clerk
By 

Notice to Clerk

THIS IS A FINAL APPEALABLE ORDER. Pursuant to Civ. R. 58(B), within three (3) days of the entry of this judgment upon the journal, the Clerk of Courts shall serve notice in accordance with Civ. R. 5, of such entry and its date upon all parties not in default for failure to appear, and shall note the service in the appearance docket.



Gary L. Yost, Judge