

**IN THE COURT OF COMMON PLEAS
- GENERAL DIVISION -
TRUMBULL COUNTY, OHIO**

)	CASE NUMBER: 2015 CV 01519
)	
BARBARA NOVOTNY)	
PLAINTIFF)	
)	
VS.)	JUDGE RONALD J RICE
)	
GARRICK KRlich)	
DEFENDANT)	<u>JUDGMENT ENTRY</u>

This cause came before the Court on the Objections to Magistrate's Decision filed by the Defendant, Garrick Krllich. On January 11, 2017, a trial was held before the Magistrate pursuant to Civ.R. 53. The Magistrate's Decision was rendered on February 24, 2017. The Defendant timely filed his objections on March 9, 2017. The Court has reviewed the objections, memoranda, exhibits, pleadings and the relevant applicable law. The Court notes Krllich did not request a transcript of the trial and therefore the Court did not review such transcript.

Krllich raises numerous objections to the Magistrate's Decision which essentially boil down to a few arguments regarding the evidence and the statutory language and definition of vexatious. First, Krllich claims Novotny's claim should have failed because she failed to demonstrate by clear and convincing evidence that she had defended against habitual and persistent vexatious conduct from Krllich. Krllich also asserts Novotny failed to prove he had actually engaged in vexatious conduct. The Court finds no merit in any evidentiary-based objection.



Initially, the Court notes Krlich failed to request and/or provide this Court with a transcript of the trial in this matter. Civ.R. 53(D)(3)(b)(iii) requires objections to factual findings to be supported with a transcript "**** of all the evidence submitted to the magistrate relevant to that finding ***." The objector has thirty days to file the transcript after filing the objections. The absence of a transcript precludes a challenge on factual findings. *Estate of Stepien v. Robinson*, 2013-Ohio-4306, ¶28.

"When a party fails to file a transcript of the evidence presented at the magistrate's hearing, the trial court, when ruling on the objections, is required to accept the magistrate's findings of fact and to review only the magistrate's conclusions of law based on those factual findings. If the objecting party fails to provide the court with a transcript of the magistrate's hearing to support the objections, the trial court may properly adopt a magistrate's factual findings without any further consideration." *Id.*

Despite the lack of transcript, the Court has reviewed the evidence and arguments of counsel. The Court finds the Magistrate's Decision accurately set forth the law as applied to the facts of this case.

The second group of objections set forth by Krlich cite error for the vexatious designation because he "**** reasonably relied upon the legal advice and expertise of his then-counsel." This objection is near offensive as it seemingly posits Krlich as an unintelligent and unwitting abettor to his legal counsel's decisions. This Court finds, based on the evidence before it, that is not a fair characterization of Mr. Krlich. Krlich has demonstrated near expertise in his recording and documentation of the incidences

of which he complains; i.e. the horn honking. Clearly, it is Mr. Krllich and not his legal counsel who is "driving the bus" on these matters.

The final set of objections set forth by Krllich challenge the dismissal without prejudice of the "Absent Plaintiffs" and the failure to levy monetary sanctions against the same. Upon review of the record before it, the Court finds no error in the dismissal or lack of monetary sanctions. A dismissal without prejudice is an appropriate sanction for the failure to prosecute a claim as demonstrated in this matter. There is no error in such assessment.

Therefore, upon careful and independent examination and analysis of the Magistrate's Decision, evidence, consideration of the objections filed by the Defendant, briefs, pleadings and other documents, the Court finds the findings of fact and conclusions of law enumerated in the Magistrate's Decision are appropriate, well-reasoned and in accordance with the evidence and the applicable rules of law.

Therefore, the Court hereby denies the objections filed by the Defendant and approves and adopts the Magistrate's Decision as its own in its entirety. The Court further finds there is no error of law or other defect on the face of the Magistrate's Decision. The Court hereby incorporates the same as the Court's findings and judgment herein as a matter of record.

The following Plaintiffs did not appear for trial: Adam Novotny, Tim Novotny, Florence Buydos, Brian Trinkes, Tracy Trinkes, Mary Beth Foltz and Brian Stipetich (collectively referred to as the Absent Plaintiffs). As a procedural matter, the Court notes the only Plaintiff to appear for the trial in this matter was Barbara Novotny. Previously, the Court ordered all parties and counsel to appear for the trial in this

matter. As a result, the Court finds sanctions are appropriate against the "Absent Plaintiffs." Accordingly, the Court hereby dismisses the claims of the Absent Plaintiffs without prejudice as a sanction for both their failure to appear for trial as ordered and failure to prosecute their claims. No additional sanctions are warranted as proposed by Krlich's motion and the same is hereby denied.

Therefore, Novotny is the sole remaining Plaintiff to prosecute her claim. Novotny filed the underlying action seeking a declaratory judgment classifying Krlich as a vexatious litigator as defined in R.C. 2323.52. Pursuant to R.C. 2323.52(A)(3), a vexatious litigator is defined as "**** a person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions ***."

Vexatious conduct is defined in section (A)(2) as: "**** 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."

Initially, Krlich claims Novotny is not a proper party to bring this declaratory action. Krlich argues Novotny is limited to allegations of vexatious conduct only in those actions to which she was a party. However, the language of the statute directs otherwise. "**** [B]y including the word 'actions,' the statute permits a court to examine other actions that a person has participated in to determine if that person is a vexatious litigator." *Catudal v. Netcare Corp.*, 2015-Ohio-4044, ¶18. It is appropriate to

examine conduct of the alleged vexatious party in all litigation in which the person was involved – not only those cases in which the moving party participated.

“***[W]hether the vexatious litigator finding is made based on conduct in a single case or across multiple cases, the plaintiff in the vexatious litigator action need not be a party to all cases relied on.” *Prime Equip. Group, Inc. v. Schmidt*, 2016-Ohio-3472 at ¶¶ 18-19. Therefore, the Court finds it appropriate and logical to look to litigious activity of Krlich in general.

There is no dispute that Krlich has filed 36 requests for civil protection orders in this Court. In eleven of these requests, full hearings were held and the protection orders were denied. In seven of these requests, full hearings were held and the protection orders were granted. However, Krlich dismissed ten requests voluntarily and eight respondents consented to the issuance of the civil protection order. Therefore, of the 36 requests, only seven were determined in Krlich’s favor on the merits.

In any event, “[i]t is the nature of the conduct, not the number of actions, that determines whether a person is a ‘vexatious litigator.’” *Borger v. McErlane*, 2001 WL 1591338, *3. Krlich began filing requests for civil protection orders regarding horn-blowing activity outside his home in 2010.

In 2010, Krlich filed 16 requests for civil protection orders. Each of these requests alleged the same behavior of respondents – i.e. blowing their vehicle’s horn in front of the Krlich home for the sole purpose to harass Krlich. Since 2010, Krlich has filed 36 nearly identical claims for civil protection orders alleging the same behavior. In 2013, Krlich filed a complaint alleging claims for intentional infliction of emotional

distress, trespass and nuisance – all based (at least in part) on the horn-blowing conduct of the 40 named Defendants.¹ In 2014, Krlich filed a nearly identical complaint alleging the same claims against 37 named defendants and one John Doe defendant. More recently, in 2016, Krlich re-filed a complaint alleging the same claims. Krlich named 25 defendants in that case. Despite the plethora of litigation, the nature of the actions alleged by Krlich consistently remains the same; respondents and defendants blowing their vehicle horn on a public street for the sole purpose of annoying or harassing Krlich. Yet the actual horn-blowing activity when reviewed is not nearly as offensive as alleged by Krlich.

Krlich testified at the trial in this matter that he sued one individual for the de minimis infraction of sounding his automobile horn once on a public street and flipping him off once. He also testified he sued others for blowing their vehicle horns several times over the course of a year. Another individual was sued for blowing their horn once and flipping him off twice.

In the present matter, Krlich rebutted the vexatious allegations by justifying his actions for the Novotny litigation wherein Krlich sued Novotny and others, 2014-CV-2134.² The complaint alleges the horn-honking activity takes place at all hours of the day and night and days of the week. The evidence simply not does support that baseless allegation.

Krlich presented evidence in the form of a DVD and an accompanying affidavit to verify that the surveillance video on the DVD showed “horn honking” by Novotny (including Adam and Timothy) on three occasions in 2010; one occasion in 2011; two

¹ This Court granted summary judgment in favor of at least four defendants in this matter.

² Novotny was one of the 37 named defendants in the 2014 intentional infliction of emotional distress case.

occasions in 2013; and one occasion in 2014. The Court notes the latest time of any "horn-honking" event occurred at 11:54 pm on July 6, 2010. The Court does not find anything harassing, threatening or annoying by seven occasions of "horn honking" by a family of three individuals (or someone driving a car registered to them) over the lengthy period of five years.

It is important to note that on each incident, the cars remained on the public street; not on the Krlich property. Further, there is no way to determine what the circumstances were on the road at that particular time. Was there oncoming traffic? Was there a pedestrian? Was there a wild animal or a domestic animal near the road? Did the driver simply accidentally push forward on the horn? All of these variables remain unknown. What is known is that Krlich objected to the behavior and interpreted these actions as an attack on him personally and filed suit accordingly – in disregard of whether the claims were viable and in a repetitive fashion based on the 36 civil protection orders previously filed identifying the same offending behavior.

Although Krlich attempted at trial to characterize the complaints and CPO requests as the work of his legal counsel, the Court finds this to be somewhat disingenuous. First, the Court must note that based on his testimony at the trial in this matter, Krlich is a well-spoken and intelligent individual. He clearly understands the general nature of his claims asserted thus far through civil litigation and civil protection order requests.

Further, the Court finds no basis for the casting of blame onto the legal counsel of Krlich filing the claims. Advice from counsel is not a screen from personal accountability. *Schmidt*, supra at ¶21. In this case, as in *Schmidt*, the cumulative

nature of the frivolous actions is attributable to Krlich. Id. Krlich has made significant investments to investigate and prosecute this alleged harassment. He has purchased video surveillance equipment and license plate cameras. He even employs a retired law enforcement official to discover the identity of the vehicle's owners (in order to know who to name in his lawsuits).³ There is no question the driving force behind every single one of Krlich's causes of action has been Krlich, himself.

Krlich brings to light concerns that a declaration of 'vexatious litigant' will act as a silencer on the right of Krlich to bring forth his actions. However, it is neither silencing nor even chilling to require a vexatious litigant to seek leave of court prior to filing an action. "There is 'nothing unusual about imposing pre-filing restrictions in matters with a history of repetitive or vexatious litigation.' (internal citation omitted)." *Simpson v. Village of Lincoln Hts.*, 2016 WL 7157469, *3. This process serves as a screening mechanism to avoid baseless, repetitive claims.

Indeed, the Court finds the behavior of repetitively filing claims requires a reasonable restraint such as that offered by R.C. 2323.52. There is "**** nothing wrong, in circumstances such as these, with an order that restrains not only an individual litigant from repeatedly filing an identical complaint, but that places limits on a reasonably defined category of litigation because of a recognized pattern of repetitive, frivolous, or vexatious cases within that category." *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269-270 (6th Cir.1998).

The vexatious statute was created to prevent an abuse of the judicial system. "At its core, the statute establishes a screening mechanism that serves to protect the

³ Notably, this information does not provide Krlich with the identity of the driver or offending horn-blower themselves; only the owner of such vehicle.

court and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings." *Mayer v. Bristow*, 91 Ohio St.3d 3, 2000-Ohio-109, *13.

The Court finds Krlich has habitually, persistently and without reasonable grounds engaged in vexatious conduct in filing the aforementioned civil actions. Krlich has filed the actions for the sole purpose to harass the offending horn blowers without regard for the viability of these claims under existing law.

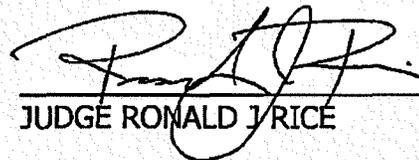
The Court hereby declares Garrick Krlich to be a vexatious litigator pursuant to R.C. 2323.52(A)(3). As such, the Court hereby declares Garrick Krlich must first obtain leave of Court prior to any of the following actions:

1. Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;
2. Continuing any legal proceedings that the vexatious litigator had instituted in any of the courts identified above (court of common pleas, municipal court or county court) prior to the entry of this order;
3. Making application, other than an application for leave to proceed, in a court of common pleas, municipal court or county court.

IT IS SO ORDERED.

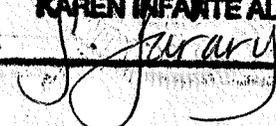
This is a final and appealable order and there is no just cause for delay.

Date: 07-11-2017

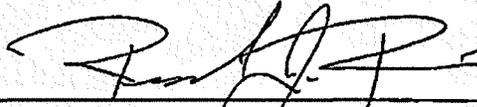


JUDGE RONALD J. RICE

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This is a true and correct copy of the original


KAREN INFANTE ALLEN, CLERK
By  Deputy

**TO THE CLERK OF COURTS: You Are Ordered to Serve
Copies of this Judgment on all Counsel of Record
or Upon the Parties who are Unrepresented Forthwith
by Ordinary Mail.**



JUDGE RONALD J RICE

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