

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CASE NUMBER: CV-2021-04-1315

JASON R WEST vs DEANA BRUTTO

JUDGE: CHRISTINE CROCE

ORDER FILED: 02/08/2022

NOTICE

TO:

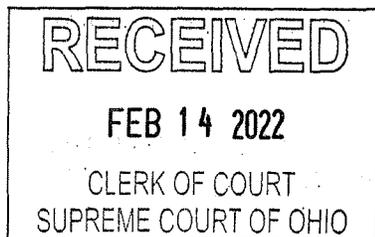
OHIO SUPREME COURT
65 SOUTH FRONT ST
ATTN: CLERK OF COURTS
Columbus, OH 43215

You are hereby notified that the following has been filed with the Summit County Clerk of Courts Office:

SUMMIT COUNTY CLERK OF COURTS ORDERS THAT PLAINTIFF JASON (R) WEST IS HEREBY
DECLARED A VEXATIOUS LITIGATOR IN THE STATE OF OHIO
AS DEFINED IN R.C. 2323.52. JUDGE JAMES KIMBLER 21 JA1280

February 8, 2022

Sandra Kurt, Clerk
Summit County Clerk of Courts



SANDRA KURT
In the Summit County Court of Common Pleas
2022 FEB -8 AM 9:49
Akron, Ohio

Jason West,

Plaintiff,

v.

Deana Brutto, et al,

Defendants

SUMMIT COUNTY
CLERK OF COURTS

Case No. CV-2021-04-1315

Judge James Kimbler

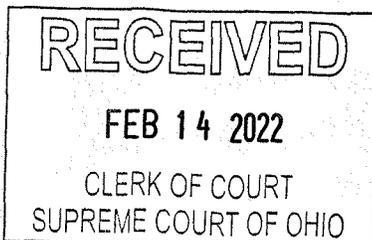
21JA1280

Judgment Entry

Procedural History

Mr. West originally filed an action against several defendants alleging that they had committed various wrongful acts which resulted in his being incarcerated in prison. This Court found that his claims were not well taken and dismissed Mr. West's action on the grounds that he did not state a cause of action against the defendants. This entry followed motions by the defendants for dismissal based on Civ. R. 12 (B) (6).

At the time this Court dismissed Mr. West's cause of action against the defendants there was a motion for summary judgment that had been filed by Ms. Brutto through her attorney. The counterclaim asserted that Mr. West was a vexatious litigator as that term is defined in R.C. 2323.52. This Court set up a briefing schedule for submission of pleadings addressing Mr. Brutto's counterclaim. This Court set a date of January 31, 2022, for the submission of pleadings. That date has now passed and Ms. Brutto's motion for summary judgment is set for decision.



Findings of Fact

Mr. West has filed several actions against various parties in several courts across Ohio. In each of these lawsuits Mr. West included Ms. Brutto as a defendant. The counties in which the lawsuits were filed are Summit County, Stark County, and Portage County.

The complaints that were filed in Portage and Stark Counties have been dismissed and as mentioned above, the complaint that was filed in Summit County, which was the complaint filed in the instant case has also been dismissed.

An examination of the pleadings filed in this case shows that Mr. West does not comply with the Ohio Rules of Civil Procedure, presents claims that are not supported by Ohio law, and in at least one pleading included material that was deemed by this Court to be scandalous.

Conclusions of Law

Ohio's vexatious litigator is found in R.C. 2323.52. R.C. 2323.52 reads, in pertinent part, as follows:

Section 2323.52 | Civil action to declare person vexatious litigator

(A) As used in this section:

(1) "Conduct" has the same meaning as in section 2323.51 of the Revised Code.

(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. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions. For the purposes of division (A)(3) of this section, "civil action" includes a proceeding under section 2743.75 of the Revised Code.

(B) A person, the office of the attorney general, or a prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation who has defended against habitual and persistent vexatious conduct in the court of claims or in a court of appeals, court of common pleas, municipal court, or county 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. The person, office of the attorney general, prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a municipal corporation may commence this civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending or within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred.

(C) A civil action to have a person declared a vexatious litigator shall proceed as any other civil action, and the Ohio Rules of Civil Procedure apply to the action.

The Ohio Supreme Court has issued a decision that deals with the constitutionality of R.C. 2323.52 with regards to the Ohio Constitution. That decision is *Mayer v. Bristow*, (2000), 91 Ohio St. 3d 3. In that decision Justice Alice Robie Resnick, found that R.C. 2323.52 implicates two rights secured under Article I, Section 16 of the Ohio Constitution. That section reads as follows:

Redress for Injury; Due Process 2001

"All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay."

There are two rights set forth in Section 16. One is for access to the courts for the redress of injury and the other is to have "due course of law" or due process when a litigant is accessing the courts. Ohio appellate courts have used the two terms interchangeably. See, for example, *Cudlin v. Cudlin*, (8th Dist.-1990), 64 Ohio App. 3d 249.

R.C. 2323.52 imposes limitations on persons deemed to be vexatious litigators by denying such litigators access to Ohio courts thus denying such litigants remedies based on the due course of law or due process. In spite of those limitations, Justice Resnick found R.C. 2323.52 to be constitutional.

The next question is whether a person can be named a vexatious litigator as a result of a counterclaim being filed against him or her?

In the case of **Borger v. McErlane**, (1st Dist.) 2001-Ohio-4030, the appellate court pointed out in the decision that the claim that the plaintiff was a vexatious litigator was set forth in the defendant's counterclaim. A search of case law shows that at least forty-four decisions have dealt with counterclaims to name a party a vexatious litigator.

In those decisions the various courts of appeal who have dealt with counterclaims to name a litigant a vexatious litigator have not had any issue with the claim that a person is a vexatious litigator being contained in a counterclaim. Since a counterclaim is a compliant filed by a defendant in a civil action.

This fact is shown by the definition of a counterclaim that is set forth In Civ. R. 13, which reads, in pertinent part, as follows:

Rule 13 - Counterclaim and Cross-Claim

(A) Compulsory counterclaims. A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. But the pleader need not state the claim if (1) at the time the action was commenced the claim was the subject of another pending action, or (2) the opposing party brought suit upon his claim by attachment or other process by which the court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this Rule 13.

(B) Permissive counterclaims. A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

(C) Counterclaim exceeding opposing claim. A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

Whether Ms. Brutto's counterclaim is seen as a compulsory counterclaim or a permissive counterclaim, her claim against Mr. West is a valid counterclaim. She sets forth a cause of action, she alleges that it arises from his filing his complaint against her, and she alleges that he is bringing actions against her to harass her or maliciously injure her.

If a court determines that a person is a vexatious litigator, then the court making such a finding is required to take certain actions that are set forth in R.C. 2323.52 (D), which reads as follows:

(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.

(2) If the court of common pleas finds a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio to be a vexatious litigator and enters an order described in division (D)(1) of this section in connection with that finding, the order shall apply to the person only insofar as the person would seek to institute proceedings described in division (D)(1)(a) of this section on a pro se basis, continue proceedings described in division (D)(1)(b) of this section on a pro se basis, or make an application described in division (D)(1)(c) of this section on a pro se basis. The order shall not apply to the person insofar as the person represents one or more other persons in the person's capacity as a licensed and registered attorney in a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims. Division (D)(2) of this section does not affect any remedy that is available to a court or an adversely affected party under section 2323.51 or another section of the Revised Code, under Civil Rule 11 or another provision of the Ohio Rules of Civil Procedure, or under the common law of this state as a result of frivolous conduct or other inappropriate conduct by an attorney who represents one or more clients in connection with a civil or criminal action or proceeding or other matter in a court of common pleas, municipal court, or county court or in the court of claims.

(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 R.C. 2323.52 (E).

As noted above, 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 R.C. 2323.52 (D) (1) (c), set forth above.

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 they are reasonable grounds for the proceedings or application.” See 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 R.C. 2323.52 (H).

Holding

This Court finds that Mr. West is a vexatious litigator as that term is defined in R.C. 2323.52. It further finds that he has filed actions which are meant to harass or maliciously injure the people he has named as defendants or that the actions he has filed are not warranted under existing Ohio law, and that the claims he is making are not supported by a modification or extension of existing law.

Discussion

Mr. West is incarcerated in prison. This Court has no doubt that Mr. West believes that his incarceration is the fault of others and not of himself. This Court notes that he has taken to signing his pleadings as “Jason West, Political Prisoner.” His language is intemperate, but more importantly, he is not setting forth valid causes of action under Ohio law.

People have the right in Ohio to bring pro se actions in which they can represent themselves, but when they do so, they are subject to the same rules and law as persons using attorneys. Mr. West is abusing this right by bringing actions that are not supported by Ohio law, and by, in at least one case, using scandalous language to describe the actions of one of the defendants.

As far as this Court is concerned, the use of Ohio’s courts to harass others who have, in Mr. West’s mind, done injury to himself by prosecuting him, and then be incarcerating him, ends with this order.

Order

Plaintiff Jason West is hereby declared a vexatious litigator in the State of Ohio. Jason West is prohibited indefinitely from doing any of the following with first obtaining leave to court to proceed:

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

2. 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

3. Making any application, other than application for leave to proceed under 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.

This order shall continue indefinitely.

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

Costs of this action are taxed to Mr. West.

So Ordered, Adjudged, and Decreed.

James L. Kimbler

I certify this to be a true copy of the original
Sandra Kurf, Clerk of Courts.

Mark Wisbey Deputy Clerk
2.8.2022

Judge James L. Kimbler

Notice to Clerk

Pursuant to Civ. R. 58 the Summit County Clerk of Courts is hereby directed to serve upon all parties not in default for failure to appear notice of this judgment entry and its date of entry on the Court's journal.

James L. Kimbler

Judge James L. Kimbler