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Carma Johnson

IN THE COURT OF COMMON PLEAS
OF MORGAN COUNTY, OHIO

MARK HOWDYSHELL,
PLAINTIFF

CASE NO. 18CV0074

-V-

BILLY BATTLE,
DEFENDANT

JUDGE DALE A. CRAWFORD

**DECISION FINDING DEFENDANT A
VEXATIOUS LITIGATOR AND ORDER**

(A 138, pg. 54)
This matter came before the Court on a trial held on November 19, 2018, wherein Plaintiff is seeking to have Defendant, Billy Battle, declared a vexatious litigator pursuant to Revised Code 2323.52. The Court took evidence and gave the parties the opportunity to submit written arguments. Only Plaintiff submitted a written argument.

Defendant is an inmate at the Ohio Penitentiary system having been convicted of felonious assault, obstructing official business, resisting arrest and brandishing a firearm, in 2009. Since his conviction, and appeal thereof, the Defendant has filed numerous civil lawsuits against public officials and his attorneys generally seeking compensation for what he believes was tortious conduct in misplacing a hearing transcript and noting in writing and orally that he may have been convicted of a crime which he did not commit. Because most of the lawsuits Defendant has filed are against local public officials, this Court has been appointed as a visiting judge to hear and dispose of the cases, all at significant cost to the State of Ohio and Morgan County.



CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL, EXCEPT WHERE
REDACTED AS REQUIRED BY LAW.
FILED 01-11-2019

CERTIFIED 02-25-2019

Carma Johnson
CARMA JOHNSON CLERK OF COURTS
MORGAN COUNTY, OHIO

Before an individual can be found to be a vexatious litigator and have sanctions imposed , the Plaintiff must prove by a preponderance of the evidence that he is a vexatious litigator who has engaged in vexatious conduct.

Revised Code 2323.52 (a) provides:

"(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 agreement 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.

"Such conduct, which employs court processes as an amusement or a weapon in itself, undermines the people's faith in the legal system, threatens the integrity of the judiciary, and casts a shadow upon the administration of justice."

Mayer v. Bristow (2000), 91 Ohio St.3d 3, 13 (See also Hull v. Sachyyn, 145 Ohio App3d 193(CA8,2001)). The Mayer Court further held at p.13:

"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 docket, results in increased costs, and oftentimes is a waste of judicial resources—resources that are supported by the taxpayers of the state. The unreasonable burden placed upon courts by such baseless litigation prevents the speedy consideration of proper litigation."

The tenth district in Helzfrich v. Allstate Ins. Co., 12AP-559, para 25, (CA 10th Sept. 30, 2013) similarly held "The vexatious litigator statute indicates the right of the courts and the taxpayers of the state to be free from the delay and expense associated with baseless litigation...It's not the number of frivolous lawsuits one files but the nature of conduct that determines whether a person is a vexatious litigator.

Defendant has filed the following relevant frivolous lawsuits:

- (1) Morgan County Common Pleas Case number 12CV0187 against the Morgan County Sheriff's Department alleging libel and slander. Case was dismissed as being time barred.

(2) Morgan County Common Pleas Case number 13CV0042. Case was filed against the judge who presided over his criminal case alleging numerous tortious complaints. The Judge was clearly immune from liability and the case was dismissed.

(3) Morgan County Common Pleas Case number 13CV0043. The case was filed against the court reporter who Defendant believed intentionally withheld (lost) a hearing transcript from the record of the Defendant's criminal appeal. The case was dismissed because the Defendant had no evidence against the reporter, and, she had immunity. (It was determined after the case was dismissed that the court reporter had nothing to do with the missing transcript.

(4) Morgan County Common Pleas Case number 13CV0105, a Mandamus action against the Defendant's trial judge and others requesting matters be redacted from the Defendant's pre-sentence investigation. The case was dismissed with no merit shown.

(5) Fifth District Court of Appeals case number 15AP0007. This was the appeal of Morgan County Common Pleas Case number 13CV0042, which the Court of Appeal found no error in the trial court's rulings.

(6) Ohio Supreme Court Case number 2013-1343. The case sought a writ of mandamus seeking, again, to have the matters redacted from his trial presentence investigation. This case was dismissed.

(7) Morgan County Court Case number 17 CR A 201. This was a complaint filed by Battle on behalf of the State seeking the

appointment of a special prosecutor and seeking criminal charges be filed against named officials. The case was dismissed.

(8) Morgan County Common Pleas Case number 18CV0021. This case, again, sought the appointment of a special prosecutor to prosecute a criminal case. The case was dismissed.

(9) Morgan County Common Pleas Case number 17CV167. A frivolous action against his former attorney, which was dismiss,

The nine cases filed were not warranted under existing law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. In addition, the conduct the Defendant engaged in, especially the conduct against the public officials, served merely to harass or maliciously injure the parties listed as defendants. While Defendant is correct that a transcript of a hearing was misplaced and an inaccurate comment was in his presentence investigation, those matters had nothing to do with his conviction (as noted by the Court of Appeals and this Court) and/or his sentence. The Defendant continues to blame others for his criminal conduct which led to his conviction.

The Court finds that the Plaintiff has proved by a preponderance of the evidence, that the Defendant is a vexatious litigator who engaged in vexatious conduct numerous times in Morgan County. (See Revised Code 2323.52).

Having found Mr. Battle to be a vexatious litigator and, pursuant to Revised Code 2323.52(D)(1), the Court hereby prohibits Mr. Battle from doing all of the following without first obtaining leave of this Court:

- (1) Instituting any legal proceedings in the court of claims, any common pleas, municipal or county court in the State of Ohio;
- (2) Continuing any proceedings that Mr. Battle has previously instituted prior to the Entry of the Order; or
- (3) Making any application, other than an application for leave to proceed as provided herein, in any court provided in section (1) above.

If Mr. Battle desires to obtain leave of this Court to file or continue previously instituted proceedings, he must do the following:

- (1) He shall file a pleading in a miscellaneous case number established by the Clerk, "Application for Leave to File [or] To Continue a Case" in typewritten form;
- (2) He shall attach to the "Application" the typewritten pleading he seeks to file with a memorandum attached thereto describing the nature of the legal and factual basis for the pleading. In addition, he shall attach to the "Application" one or more of the affidavits supporting the good faith legal and factual basis for the pleadings;
- (3) Ordinarily, this Court will consider the "Application" in a non-oral proceeding, but the Court reserves the right to schedule an oral hearing wherein the Applicant may be placed under oath regarding the good faith basis for the "Application."
- (4) If the Court determines by a preponderance of the information submitted that the proceedings sought by Applicant is not an abuse of process and there are reasonable grounds for the proceeding, the

"Application" will be granted. The Court may impose conditions on any leave it grants.

(5) Except as provided in (4) herein (imposition of conditions), if the Court grants Applicant leave to file a new case or proceed with an existing case, he need not obtain leave from this Court to file any further documents unless he seeks to add a new claim, add a new party, or request a different form or amount of relief.

(6) If Mr. Battle obtains licensed counsel to represent him in a new matter and/or existing case he need not seek an "Application" to file a new case or continue an existing case. If counsel obtains leave to withdraw for the case and no counsel appears, leave to proceed on all future matters will be required.

(7) Mr. Battle need not obtain leave to file a Civ. R. 41 (A) Dismissal on any case.

This Order shall be effective immediately and shall apply to all pending and future cases filed by Mr. Battle.



HON. DALE A. CRAWFORD
Sitting by Assignment

Xc: Mark J. Howdyshell
Billy J. Battle
Hon. Dale A. Crawford
File
Eric Allen