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2018CV0493 - Mary "Molly" L Mack

CINDY A. HOFNER
CLERK OF COURTS WOOD COUNTY OHIO

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COMMON PLEAS COURT, BOWLING GREEN, OHIO
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THIS 14th DAY OF February, 2020.

IN THE COURT OF COMMON PLEAS OF WOOD COUNTY, OHIO

**Wood County Child Support
Enforcement Agency,**

Plaintiff,

v.

Jill Behnfeldt,

Defendant.

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Case No. 2018-CV-0493

Judge Mary "Molly" L. Mack

DECISION AND ORDER

I. Introduction.

This case is before the Court on the motion of Plaintiff Wood County Child Support Enforcement Agency (hereinafter "WCCSEA") to reconsider and supplement the record of this Court's July 18, 2019 order denying Plaintiff's motion for summary judgment. Defendant Jill Behnfeldt (hereinafter "Behnfeldt") has not filed a response.

A. Facts.

On August 20, 2018, WCCSEA filed a Complaint to have Behnfeldt declared a vexatious litigator pursuant to R.C 2323.51. In its initial motion for summary judgment, filed March 11, 2019, WCCSEA alleged that Behnfeldt filed six (6) motions seeking to

relieve her of a child support obligation. WCCSEA argued that the motions Behnfeldt filed were not meritorious, 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. The Court denied WCCSEA's motion for summary judgment and determined that only three (3) of the six (6) motions constituted vexatious conduct.

The Court noted in its decision that the twenty-three (23) pleadings referenced in WCCSEA's Exhibit 19 would likely constitute vexatious conduct, however those filings were not before the Court to make a proper determination. During a status pre-trial on August 20, 2019, WCCSEA made an oral motion for leave to file a motion to reconsider summary judgment and supplement the record with additional filings, which the Court granted. WCCSEA timely filed its motion, and the Court has reviewed the supplemental documentation filed.

B. Issue.

WCCSEA requests that the Court reconsider its July 18, 2019 order in which it denied WCCSEA's motion for summary judgment. The issue is whether or not this Court should grant Plaintiff's motion to reconsider summary judgment.

II. Analysis.

In *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 8 O.O.3d 73, 375 N.E.2d 46 (1978), it was held that for summary judgment to be granted, it must appear "(1) that there is no genuine issue as to any material fact; (2) that the moving party is entitled to judgment as a matter of law; and (3) that reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for

summary judgment is made, who is entitled to have the evidence strongly construed in his favor." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St.2d 64, 8 O.O.3d 73, 375 N.E.2d 46 (1978); and *Conley-Slowinski v. Superior Spinning & Stamping Co.*, 128 Ohio App.3d 360, 714 N.E.2d 991 (6th Dist.1998). See also, Civ.R. 56(C); and *Leibreich v. A. J. Refrigeration, Inc.*, 67 Ohio St. 3d 266, 1993-Ohio-12, 617 N.E.2d 1068.

"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.'" *Mansour v. Croushore*, 12th Dist. Butler Nos. CA2008-07-161, CA2008-07-170, 2009-Ohio-2627, ¶ 50, citing *McClure Fischer Attached Homes*, 145 Misc.2d 38, 882 N.E.2d 61, 2007-Ohio-7259, ¶ 33. "Summary judgment can be an 'appropriate means' of resolving a claim that a party is a vexatious litigator." *Davie v. Nationwide Insurance Company of America*, 8th Dist. Cuyahoga No. 105261, 2017-Ohio-7721, ¶ 43, citing *Prime Equip. Group, Inc. v. Schmidt*, 10th Dist. Franklin No. 15AP-584. 2016-Ohio-3472, ¶ 11. 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 plaintiff must submit appropriate evidence complying with Civ.R. 56." *Prime*, ¶ 11.

A "vexatious litigator" is a "person who has habitually, persistently, and without reasonable ground 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). R.C. 2323.52(A)(1) defines "Conduct" to have the same meaning as R.C. 2323.51(A)(1)(a) defines that term for "frivolous conduct:"

1. "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

In pertinent part, “vexatious conduct” includes conduct of a party in a civil action 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.” R.C. 2323.52(A)(2)(b).

In its motion to reconsider summary judgment, WCCSEA supplements the record with twelve (12) filings that Behnfeldt submitted to the Wood County Juvenile Court relating to case 2009 JB 0320. In that case Behnfeldt filed the following motions seeking relief from her child support obligation: (1) Objection to Magistrates Decision Dated May 19, 2010, filed August 15, 2018, (2) Motion for the Court to Accept Additional Evidence, filed August 16, 2018, (3) Motion for Leave of Court to File Objections to Magistrate's Decision and Objections to Magistrates Decision Dated May 19, 2010, filed August 17, 2018, (4) Motion for a Finding of Unavoidable Delay, filed August 17, 2018, (5) Motion for a New Trial, filed September 28, 2018, (6) Notice of Withdrawal of Motion for New Trial, filed October 1, 2018, (7) Renewed Motion for a Finding of Unavoidable Delay, filed September 28, 2018, (8) Renewed Motion for Leave of Court to File Objections to Magistrate's Decision and Objections to Magistrate's Decision Dated May 19, 2010, filed September 28, 2018, (9) Renewed First Amended Motion for Leave of Court to File Objections to Magistrate's Decision and Objections to Magistrate's Decision Dated May 19, 2019, filed September 28, 2018, (10) Renewed Motion for Retroactive Modification of Child Support Order Based on Special and Substantial Circumstances, filed October 1,

2018, (11) Renewed Motion for Evidentiary Hearing, filed October 1, 2018, and (12) Delayed Motion for New Trial, filed October 2, 2018.

According to WCCSEA, none of the aforementioned motions are meritorious. Furthermore, WCCSEA alleges that Behnfeldt's conduct in requesting those orders was not warranted under existing law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law. To support its motion WCCSEA has attached twelve (12) motions and notices, in addition to the previous six (6) motions filed in its original motion for summary judgment. See Exhibits 1 through 12 attached to motion for reconsideration. Each of those exhibits have been certified by the clerk of the juvenile court that they are true and accurate copies, thus the Court may properly consider them under Civ.R. 56.

In determining whether there is a genuine issue of material fact as to Behnfeldt being a vexatious litigator, the Court must continue going through each filing presented as an exhibit and determine whether Behnfeldt's actions within each filing constitute vexatious conduct. *Gains v. Harman*, 7th Dist. Mahoning No. 01 CA 89, 2002-Ohio-2793, ¶ 19; R.C. 2323.52(A)(2). After reviewing the exhibits under that criteria, the Court "must then concentrate on the actions that met the criteria and determine whether together they represent behavior that is habitual, persistent, and without reasonable cause." *Gains*, ¶ 19; R.C. 2323.2(A)(3).

A. Objection to Magistrate's Decision.

On August 15, 2018, Behnfeldt filed an Objection to Magistrate's Decision dated May 19, 2010 pursuant to Civ.R. 53(D)(4). Exhibit 1. In that motion she objected to the

magistrate's decision to adopt WCCSEA's modification recommendation to impute her annual potential income of \$15,184, as she was receiving Supplemental Security Income (hereinafter "SSI"). WCCSEA argues in its motion for reconsideration that Behnfeldt's objection is untimely by years.

Ohio Rule of Civil Procedure 53(D)(3)(b)(i) states that a party may file written objections to a magistrate's decision within fourteen (14) days of the filing of the decision. "If one or more objections to a magistrate's decision are *timely filed*, the court shall rule on those objections." Civ.R. 53(D)(4)(d). If no objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification. Civ.R. 53(D)(4)(c).

In the instant case, the magistrate filed his decision on May 19, 2010. Behnfeldt filed her objection to the magistrate's decision on August 15, 2018, over eight years later, and well after the time limit for filing objections. Therefore, the Court finds that Behnfeldt engaged in vexatious conduct when she filed the motion.

B. Motion to Submit Additional Evidence.

On August 16, 2018, Behnfeldt filed a motion for the Court to accept additional evidence to support her objection to the magistrate's decision dated May 19, 2010, pursuant to Civ.R.53(D)(4)(b). Exhibit 2. WCCSEA argues that Behnfeldt's motion for the court to accept additional evidence is just another untimely attempt to have the Court address Behnfeldt's objections to the magistrate's 2010 decision.

The additional evidence that Behnfeldt wants the Court to accept is her 2011 SSI eligibility determination. However, the Court has already determined that Behnfeldt's

eligibility for SSI did not exist at the time of the 2010 hearing. Therefore, this motion had no merit when it was filed by Behnfeldt.

C. Motion for Leave of Court to File Objections.

On August 17, 2018, Behnfeldt filed a motion for leave to file objections to magistrate's decision dated May 19, 2010. Exhibit 3. WCCSEA argues that this is another attempt to have the court address Behnfeldt's objections to the magistrate's 2010 decision. In addition, WCCSEA argues that the May 19, 2010 magistrate's order had been superseded by a subsequent order filed in 2012.

Behnfeldt was required to file her objections, or motion for leave to file objections within fourteen (14) days of the magistrate's decision. Civ. R. 53(D)(3)(b)(i). Behnfeldt filed her request for leave to file objections approximately eight (8) years after the magistrate's decision. A motion for an extension of time may be made after the time to file expires if the failure to file was a result of excusable neglect. Civ.R. 6(B). However, in her motion for leave to file objections, Behnfeldt only offers arguments on the merits of her objections and provides no support for a claim of excusable neglect. Therefore, this motion had no merit when it was filed by Behnfeldt.

D. Motion for a Finding of Unavoidable Delay.

On August 17, 2018, Behnfeldt filed a motion for a finding of unavoidable delay. Exhibit 4. In her motion Behnfeldt argues that she was "unavoidably prevented, with due diligence, from discovering additional evidence". *Id.* Behnfeldt is referring to the fact that she became eligible for SSI in 2011. WCCSEA argues that even if Behnfeldt had appeared and presented evidence at the 2010 hearing, her eligibility for SSI did not exist

at the time of the 2010 hearing. Behnfeldt's SSI eligibility is not "newly discovered evidence" for the purposes of this motion. Therefore, this motion had no merit when it was filed by Behnfeldt.

E. Motion for New Trial.

On September 28, 2018, Behnfeldt filed a motion for a new trial. Exhibit 5. On October 1, 2018, Behnfeldt filed a notice of withdrawal and withdrawal of motion for new trial filed September 28, 2018. Exhibit 6. Behnfeldt's motion for a new trial was filed untimely, as a motion for new trial must be served within twenty-eight (28) days of the entry of judgment. Civ.R. 59(B). Behnfeldt filed her motion eight (8) years after the entry of judgment. Although Behnfeldt ultimately withdrew her motion, she had no basis for filing it in the first place. Therefore, the Court finds that Behnfeldt's conduct was vexatious when she filed this motion.

F. Renewed Motion for Finding of Unavoidable Delay.

On September 28, 2018, Behnfeldt filed a renewed motion for a finding of unavoidable delay. Exhibit 7. This motion is identical to the motion for a finding of unavoidable delay that Behnfeldt filed on August 17, 2018. Exhibit 4. "Consistent repetition of arguments and legal theories that have been rejected by the trial court numerous times can constitute vexatious litigation." *Farley v. Farley*, 8th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, 2003 WL 21405558 at ¶ 46. The Court finds that Behnfeldt's conduct was vexatious when she filed this motion.

G. Renewed Motion for Leave of Court to File Objections.

On September 28, 2018, Behnfeldt filed a renewed motion for leave of court to file objections to the magistrate's decision dated May 19, 2010. Exhibit 8. This motion is identical to the motion for leave of court to file objections to magistrate's decision dated May 19, 2010, that Behnfeldt filed August 17, 2018. Exhibit 3. This motion is untimely and merely repeats the same legal arguments regarding Behnfeldt's SSI eligibility. Therefore, the Court finds that Behnfeldt's conduct was vexatious when she filed this motion.

H. Renewed First Amended Motion for Leave to File Objections.

On September 28, 2018, Behnfeldt filed a renewed first amended motion for leave to file objections. Exhibit 9. This motion was filed within hours of her renewed motion for leave of court to file objections, and over eight (8) years after the magistrate's decision. In this motion Behnfeldt continues to make the same repetitive arguments that the court has already rejected relating to her SSI eligibility. Therefore, the Court finds that Behnfeldt engaged in vexatious conduct when she filed the motion.

I. Renewed Motion for Retroactive Modification of Child Support Order.

On October 1, 2018, Behnfeldt filed a renewed motion for retroactive modification of child support order based on special and substantial circumstances. Exhibit 10. In that motion, Behnfeldt again requested the Court to retroactively modify its child support order to April 1, 2009. This motion contains the same legal arguments as her motion for retroactive modification of child support order based on special circumstances, filed July

24, 2018. While the Court did not find that Behnfeltd's conduct in her motion for retroactive modification of child support order was vexatious, case law states that repetition of the same legal arguments and theories that have already been rejected by the court numerous times can constitute vexatious litigation. *Lasso v. Coleman*, 2nd Dist. Montgomery No. 21983, 2008-Ohio-4140, 2008 WL 3583356. Therefore, the Court finds that Behnfeltd engaged in vexatious conduct when she filed this motion.

J. Renewed Motion for Evidentiary Hearing.

On October 1, 2018, Behnfeltd filed a renewed motion for evidentiary hearing. Exhibit 11. In that motion, Behnfeltd requests an evidentiary hearing on evidence submitted in support of her objection to the magistrate's decision dated May 19, 2010. Again, this motion was filed over eight (8) years after the magistrate's decision was filed. Further, Behnfeltd is again attempting to provide the Court with her SSI eligibility. At the time of the magistrate's 2010 decision, Behnfeltd was not eligible for SSI. Therefore, the Court finds that her conduct in filing this motion is vexatious.

K. Delayed Motion for New Trial.

On October 2, 2018, Behnfeltd filed a delayed motion for a new trial with evidentiary hearing requested. Exhibit 12. In that motion, Behnfeltd requests that the Court grant a new trial due to newly discovered evidence of her SSI eligibility. Behnfeltd's motion for a new trial was filed untimely, as a motion for new trial must be served within twenty-eight (28) days of the entry of judgment. Civ.R. 59(B). Behnfeltd filed her motion over eight (8) years after the entry of judgment. Therefore, the Court finds that this motion had no merit when it was filed.

III. Conclusion

The Court has reviewed and considered the pleadings and Civ.R. 56(C) evidence in this case. The Court has construed the evidence most strongly in favor of Behnfeldt, the party against whom the motion for summary judgment was made. Upon conclusion, the Court finds that, after reviewing the supplemental documentation provided, WCCSEA has met its burden of proof showing that no genuine issue of material fact exists as to any of the Counts in the Complaint.

Accordingly, based upon the foregoing, it is

ORDERED that the motion of Plaintiff Wood County Child Support Enforcement Agency for reconsideration of summary judgment is granted; and it is

FURTHER ORDERED that the motion of Plaintiff Wood County Child Support Enforcement Agency for summary judgment is granted; and it is

FURTHER ORDERED that Defendant Jill Behnfeldt habitually, persistently, and without reasonable grounds, engaged in "vexatious conduct" within the meaning of R.C. 2323.52(A), and that she is a vexatious litigator within the meaning of R.C. 2323.52(A)(3); and it is

FURTHER ORDERED that Defendant Jill Behnfeldt must comply with the provisions of R.C. 2323.52(F)(1) if she proposes to continue to assert any claim without duly authorized legal counsel in Wood County Common Pleas Court. She shall not make any motion or application other than an application to proceed for any case she proposes

to file or in which she continues to assert any claim without duly authorized legal counsel in Wood County Common Pleas Court; and it is

FURTHER ORDERED that within 30 days after the filing of this judgment entry, Jill Behnfeldt shall file any application to proceed in this Court for leave to continue the assertion of any pending claim she has in Wood County, Ohio. If she fails to file an application in this Court within 30 days after this Court files its judgment entry to proceed *pro se* for any case pending in this Court or if this Court denies the application, the Court shall deny her any further relief for any *pro se* claim or motion; and it is

FURTHER ORDERED that, pursuant to R.C. 2323.52(F), this Court shall not grant her application to proceed for any claim without duly authorized legal counsel, unless she satisfies this Court that the proceedings or application(s) are not an abuse of process of the court in question and that there are reasonable grounds for that proceeding or application; and it is

FURTHER ORDERED that, pursuant to R.C. 2323.52(F)(2), Defendant Jill Behnfeldt must comply with the provisions of R.C. 2323.52(F)(2) if she proposes to file or continues to assert any claim or appeal without duly authorized legal counsel in any Ohio court of appeal; and it is

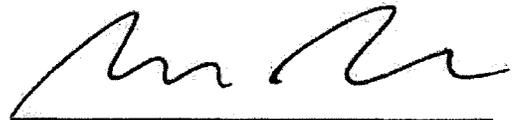
FURTHER ORDERED that within 30 days after the filing of this judgment entry, Defendant Jill Behnfeldt shall file in the applicable Ohio court of appeals any application to proceed for any pending appeal or claim she has in the court of appeals. If she fails to file an application to proceed *pro se* in that court of appeals within 30 days after this Court files this judgment entry, or if that court of appeals denies that application, that court

should dismiss the case or deny her any further relief on any *pro se* claim or motion; and it is

FURTHER ORDERED that, pursuant to R.C. 2323.52(H), the clerk of this court shall send a certified copy of this judgment to the clerk of the Ohio supreme court for publication in a manner that the supreme court has determined is appropriate and that will facilitate the clerk of various Ohio courts in refusing to accept pleadings or other papers submitted by or on behalf of Jill Behnfeldt without duly authorized legal counsel and without first obtaining leave to proceed from this Court to file that pleading or other paper; and it is

FURTHER ORDERED that this Order shall continue in full force and effect until its expiration on January 2, 2022; and it is

FURTHER ORDERED that judgment is entered against Defendant Jill Behnfeldt for the cost of this action.



Judge Mary "Molly" L. Mack

CERTIFICATE

Clerk to furnish copies of this entry to registered attorneys electronically with PDF attachment and via ordinary mail to all unregistered attorneys and unrepresented parties.