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



KATHY W. COLEMAN
Plaintiff

Case No: CV-08-653392

TIMOTHY J MCGINTY

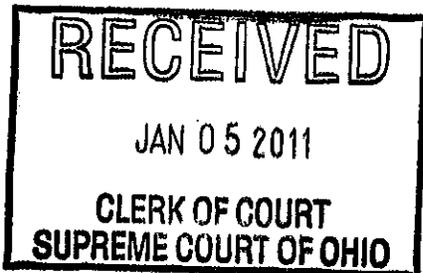
THE CITY OF BEACHWOOD, OHIO, ET AL
Defendant

JOURNAL ENTRY

96 DISP.OTHER - FINAL

HEARING HELD ON 09/22/2010 ON DEFENDANT MYRNA GILL'S RENEWED MOTION FOR SANCTIONS AND ATTORNEY'S FEES, AND TO HAVE PLAINTIFF DEEMED A VEXATIOUS LITIGATOR, FILED 06/18/2010. MOTION IS HEREBY GRANTED. SEE ATTACHED JOURNAL ENTRY AND OPINION. FINAL. COURT COST ASSESSED TO THE PLAINTIFF(S).

Judge Signature OSJ Date



Beachwood Police Detective Allan Baumgartner, Myrna Gill and the Cleveland Municipal School District Board of Education. The complaint alleged causes of action for malicious prosecution, defamation, retaliation, intentional infliction of emotional distress, and tortuous abuse of process.

The underlying facts that were the basis of Coleman's complaint revolve around a criminal action against her in Beachwood Municipal Court. Coleman was charged with telephone harassment after Myrna Gill, who was a former counselor of Coleman, went to the police after Coleman continued to contact and call Gill after she had terminated her professional relationship with Coleman. The police placed a "trap" on Gill's phone, documented further calls from Coleman and thus found probable cause to bring the criminal charges. Coleman was acquitted at trial of the charges and subsequently filed this lawsuit against the multiple defendants previously listed.

After several of the defendants in the case filed motions for a more definite statement, Coleman first sought multiple extensions of time to respond to these motions and other motions. The Court ordered Coleman to file a more definite statement in the form of an amended complaint clarifying her causes of action. Coleman failed to file an amended complaint and ultimately filed a voluntary dismissal of the matter pursuant to Civil Rule 41(A) on March 8, 2007.

Coleman, again representing herself pro se, then refiled the matter on March 10, 2008 in this current action. Coleman's complaint in this matter named all the defendants from the prior action except for Beachwood Police Department and Cleveland Municipal School District Board of Education. The causes of action stated in the complaint were for malicious prosecution, tortuous abuse of process, and intentional infliction of emotional distress.

Defendants City of Shaker Heights, and Margaret Cannon in her capacity as Shaker Heights Law Director again filed a motion for more definite statement, and again Coleman sought an extension to respond to their motion. The Court again ordered Coleman to amend her complaint to clarify her causes of action as to these defendants. Coleman never did so and simply voluntarily dismissed her claims as to these defendants.

All of the remaining defendants filed dispositive motions as to all of Coleman's claims. Defendants City of Beachwood, Beachwood Law Director Margaret Anne Cannon, Beachwood Prosecutor Thomas Greve, and Beachwood Detective Allan Baumgartner all filed a motion for summary judgment and Defendant Myrna Gill filed a motion for judgment on the pleadings. Coleman filed two motions for extension of time to respond to these motions but never filed any brief in opposition to the motions. The Court granted the motion for summary judgment and the motion for judgment on the pleadings.

Coleman appealed the Court's ruling to the Eighth District Court of Appeals. The Court of Appeals affirmed the Court's granting of summary judgment as to all of the Beachwood defendants and affirmed the Court's granting of judgment on the pleadings as to Coleman's claim of abuse of process against Gill. However, the Court of Appeals under the standard for a motion for judgment on the pleadings, remanded as to Coleman's claims of malicious prosecution and intentional infliction of emotional distress. The case was remanded and Gill submitted a motion for summary judgment as to these remaining claims. Coleman, who had retained legal counsel at this point, did file a response to the motion for summary judgment. The Court granted the motion for summary judgment finding, as it had for all of the other defendants in this matter, that there were no genuine issues of material fact and that defendant Gill was entitled to judgment as a matter of law.

Gill then renewed her motion for sanctions and attorneys fees pursuant to R.C. 2323.51, and sought to have Coleman declared a vexatious litigator pursuant to R.C. 2323.52.

LAW AND ANALYSIS:

Gill seeks two different orders from this Court. First, Gill moves the Court for an award of attorney's fees as a sanction for frivolous conduct. Second, Gill moves the Court to issue an order declaring Coleman to be a vexatious litigator. The Court will address each of these issues separately.

Award of Attorney's Fees as a Sanction for Frivolous Conduct

Gill first seeks the Court to award her attorney's fees as a sanction for frivolous conduct under R.C. 2323.51. "Frivolous conduct" is conduct that satisfies any of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action or appeal or is for another improper purpose, including, but not limited to, causing unnecessary delay or a needless increase in the cost of litigation.

(ii) It is not warranted under existing law, cannot be supported by a good faith argument for an extension, modification, or reversal of existing law, or cannot be supported by a good faith argument for the establishment of new law.

(iii) The conduct consists of allegations or other factual contentions that have no evidentiary support or, if specifically so identified, are not likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.

(iv) The conduct consists of denials or factual contentions that are not warranted by the evidence or, if specifically so identified, are not reasonably based on a lack of information or belief.

R.C. 2323.51(A)(2)(a)(i)-(iv).

After conducting a hearing, a court may award reasonable attorney's fees to any party to the civil action who was adversely affected by frivolous conduct. At the hearing, the court is to

determine whether the particular conduct was frivolous, whether any party was adversely affected by it, and the amount, if any, of an award to be made. R.C. 2323.51(B)(1)-(2).

Pursuant to statute this Court set Gill's motion for hearing on August 30, 2010. Coleman failed to appear at the hearing, consistent with her pattern of delaying proceedings in this matter. Therefore, the Court rescheduled the hearing for September 22, 2010. Coleman again failed to appear at the hearing. Coleman's attorney was present at the hearing, however, and made an argument that Coleman's conduct was not frivolous for two reasons, first because she was acquitted of the criminal charges against her, that she must have had a claim warranted under existing law and second, because the court of appeals had remanded her claim for further proceedings that this meant she had a non-frivolous claim. However, these arguments are without merit because it overlooks the facts that the appellate court affirmed summary judgment on all claims except two in which the court was required to accept Plaintiff's allegations as true under the judgment on the pleading standard. Upon further summary judgment motion by Gill on the remaining claims, it is clear that none of the factual contentions made by Coleman have any evidentiary support and her claims are not warranted under existing law.

Additionally, Coleman's counsel had no response to the facts presented at the hearing that Coleman has continually caused unnecessary delay and increased cost of litigation in this matter by failing to timely respond to motions and discovery, seeking continual extensions and failing to appear at court ordered appearances. All of these actions by Coleman demonstrate that her conduct is frivolous and meant to harass the defendants in this matter.

The Court finds that Coleman's conduct in this action satisfies the statutory definition of frivolous conduct in that her filing this lawsuit was obviously meant to serve the purpose of harassing Myrna Gill and the other defendants in this matter. As demonstrated by the pleadings

and motion practice in this case, the allegations and factual contentions made by Coleman in her complaint against defendants have no evidentiary support and are not warranted by the evidence that was presented in this matter. Further, Coleman caused unnecessary delay and a needless increase in cost of litigation in this matter.

Having found that Coleman's conduct was frivolous in this matter, the Court further finds that Defendant Gill has been adversely affected by this frivolous conduct. Gill has had to endure over four years of litigation in this matter and she testified as to the stress that this has caused her along with the expense of the litigation. As such, the Court awards reasonable attorney's fees to Defendant Gill in the amount of \$32,435.70 as was presented at the hearing. Coleman is ordered to pay these attorney's fees pursuant to R.C. 2323.51(B).

Declaration of Coleman as a Vexatious Litigator

Gill also seeks to have Kathy Coleman declared a vexatious litigator by the Court pursuant to R.C. 2323.52, which defines vexatious conduct and vexatious litigator as follows:

(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...

R.C. 2323.52(A)(2)-(3).

The Court finds that Coleman's conduct in this matter is vexatious conduct as it satisfies all three categories of being vexatious. First, Coleman's conduct obviously serves merely to harass or maliciously injure another party to the civil action. This is shown by Coleman's multiple threats towards Gill and her counsel to file further lawsuits against them if they continued to pursue the sanctions claim. (See Exhibits B & C, attached to Gill's Brief in Opposition to Plaintiff's Motion for Protective Order to Our Motion to Strike and Motion For Sanctions, filed 09/22/2010, where Coleman sent emails to counsel threatening further lawsuits, stating "If you refuse to withdraw the motion you, Gill and your law firm shall be sued"). Second, Coleman's 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. All of Coleman's claims have been disposed of though summary judgment, and as addressed above, Coleman failed to present any evidentiary support for the allegations made in her claims. Third, Coleman's conduct has been imposed solely for delay as can be seen by her multiple request for extensions, her failure to timely respond to discovery, her failure to comply with court ordered deadlines and failure to appear at court ordered hearings.

Other courts have documented that these delay tactics are a repeated pattern of Coleman. See Coleman v. Cleveland Sch. Dist. (Nov. 4, 2004), 8th Dist. Nos. 84274, 84505, 2004-Ohio-5854 (Judge Sweeney states that "many motions filed by her that demonstrate a pattern of missing established deadlines and intentionally causing delay" and "[I]ndeed, this Court noted that Coleman's conduct 'appears to be dilatory and contumacious.'" Citing Coleman v. Cleveland Sch. Dist. Bd. of Ed. Et al. (Feb 27, 2003), Cuyahoga App. Nos. 81674, 81811.)

Under R.C. 2323.52(A)(3) a "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.

The Court finds that Coleman is a vexatious litigator under the statutory definition of R.C. 2323.52(A)(3) based on both her conduct in this case and the extensive history of Coleman filing multitudes of meritless lawsuits in the Cuyahoga Common Pleas Court, the Eighth District Court of Appeals, the U.S. District Court, Northern District of Ohio and the Sixth Circuit Court of Appeals and repeated writs of prohibition and affidavits of disqualification against judges assigned to these cases. Coleman has clearly "habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions" as shown by the evidence presented at the hearing.

Gill presented evidence not only of Coleman's vexatious conduct in this matter, but also submitted an entire three-inch thick binder full of dockets demonstrating Coleman excessive and abusive use of the legal system to file meritless lawsuits for purposes of harassment. Coleman has filed at least forty-six civil actions in both state and federal court since 1990, and according to the evidence presented at the hearing, she has not been successful on the merits in any of these actions.

Counsel for Coleman did not present any evidence to rebut any of this at the hearing and based his sole argument for why Coleman should not be declared a vexatious litigator on the argument that because Defendant sought to have Coleman declared a vexatious litigator though a

motion rather than a counterclaim or a complaint that the Court is not authorized to make such a ruling.

Counsel's argument is based on a flawed reading of R.C. 2323.52(B), which states:

(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. (emphasis added).

Counsel has failed to show how this statute prohibits a court from declaring a person a vexatious litigator by motion in a pending case. This statute merely provides statutory grounds for filing a separate civil action but does not make such a filing mandatory. The "may" language in the statute as opposed to "shall" indicates that commencement of a separate civil action is permissive and not mandatory. In Grundstein v. Greene (Ohio App. 8th Dist.) No. 87623, 2006-Ohio-2205, the Eighth District Court of Appeals has confirmed that a court does have jurisdiction to grant a motion to deem a party a vexatious litigator without the filing of a separate lawsuit.

In Grundstein, a defendant moved to have Grundstein declared a vexatious litigator. Judge Greene dismissed Grundstein's case and retained jurisdiction to rule on the vexatious litigator motion. After hearing, Judge Greene found Grundstein to be a vexatious litigator. Grundstein appealed arguing that Greene had "lost personal jurisdiction over him because the vexatious litigator claim was commenced by a motion and not by a complaint or counterclaim."

Id. at ¶6. The court of appeals rejected this argument and found that the authorities cited by him “fail to establish that the motion to declare a person a vexatious litigator in a pending case is so improper as to deprive the trial court of jurisdiction. Absent such a showing, Judge Greene had sufficient jurisdiction to determine her own jurisdiction.” Id.

Further, the Rules of Practice for the Supreme Court of Ohio also support the position that a party may be declared a vexatious litigator upon motion and not be filing a separate action. Supreme Court Rule of Practice 14.5(B) states “If a party habitually, persistently, and without reasonable cause engages in frivolous conduct under division (A), the Supreme Court may, sua sponte or on motion by a party, find the party to be a vexatious litigator.” This demonstrates that a court does have authority to rule upon a motion to have a party declared a vexatious litigator without having to file a new case. Therefore, the Court finds that it has jurisdiction to rule on the motion to have Coleman declared a vexatious litigator.

Upon review of the evidence presented at the hearing it is clear that Coleman meets the statutory definition of a vexatious litigator. She has habitually, persistently, and without reasonable grounds filed repeated lawsuits against multiple defendant without any merit. Further, upon the filing of these suits she has engaged in a pattern of ignoring court orders and delaying proceedings causing parties to incur additional litigation costs. Therefore, the Court hereby finds Kathy W. Coleman to be a vexatious litigator under R.C. 2323.52.

CONCLUSION

WHEREFORE, hearing having been held, the Court hereby finds and it is SO ORDERED that Plaintiff Kathy W. Coleman has engaged in frivolous conduct under R.C. 2323.51 and that she is ordered to pay Defendant Myrna Gill’s attorney’s fees in the amount of \$32,435.70.

It is further SO ORDERED that Plaintiff Kathy W. Coleman is declared to be a vexatious litigator under R.C. 2323.52. Pursuant to R.C. 2323.52(D)(1), as a result of Coleman being declared a vexatious litigator, Coleman is hereby prohibited from doing the following without first obtaining leave of 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 above prior to the entry of the order;

(c) Making any application, other than an application for leave to proceed, in any legal proceedings instituted by the vexatious litigator or another person in any of the courts specified above.

Coleman is further subject to all other restrictions and requirements of vexatious litigators under R.C. 2323.52.

IT IS SO ORDERED.

Timothy J. McGinty
Judge Timothy J. McGinty

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DEC 27 2010

GERALD E. FUERST, CLERK
By *Wardrop* Deputy

THE STATE OF OHIO } Cuyahoga County	SS. I. GERALD E. FUERST, CLERK OF THE COURT OF COMMON PLEAS WITHIN AND FOR SAID COUNTY.
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN AND COPIED FROM THE ORIGINAL <i>JOURNAL</i>	
<i>ENTRY AND OPINION FILED 12/27/10</i>	
NOW ON FILE IN MY OFFICE.	
WITNESS MY HAND AND SEAL OF SAID COURT THIS <i>30th</i>	
DAY OF <i>Dec</i> A.D. 20 <i>10</i>	
GERALD E. FUERST, Clerk	
By <i>Wardrop</i>	Deputy