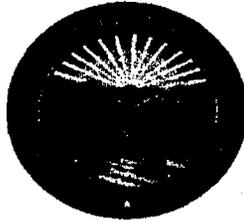


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IN THE COURT OF COMMON PLEAS
BROWN COUNTY, OHIO

ZACHARY A. CORBIN
BROWN COUNTY PROSECUTOR

Plaintiff,

vs.

RICHARD CURTIS

Defendant.

: CASE NO. 2017-0570
:
: (JUDGE SCOTT T. GUSWEILER)
:
: (MAGISTRATE W. KENNETH ZUK)
:
: MAGISTRATE'S DECISION
:
:

This cause came on for hearing on July 18, 2018 before the Court's Civil Magistrate. The Plaintiff, Zachary A. Corbin, Brown County Prosecutor, was present through and represented by Mary McMullen, Assistant Prosecuting Attorney. The Defendant, Richard Curtis, was personally present, having been returned to Brown County, Ohio for purposes of attending the hearing. The Defendant is being held at the Marion Correctional Institution where he is serving a life sentence for an aggravated murder conviction in Case No. 2009-CR-2041. The Defendant appeared Pro Se.

Vexatious litigator litigation is governed by Ohio Revised Code Section 2323.52, which provides as follows:

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.

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(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.

(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.
- (E) An order that is entered under division (D)(1) of this section shall remain in force indefinitely unless the order provides for its expiration after a specified period of time.

(F)

(1) A court of common pleas that entered an order under division (D)(1) of this section shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court unless the court of common pleas that entered that order is satisfied that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of common pleas that entered an order under division (D)(1) of this section to grant the person leave to proceed as described in division (F) (1) of this section, the period of time commencing with the filing with that court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(2) A person who is subject to an order entered pursuant to division (D)(1) of this section and who seeks to institute or continue any legal proceedings in a court of appeals or to make an application, other than an application for leave to proceed under division (F)(2) of this section, in any legal proceedings in a court of appeals shall file an application for leave to proceed in the court of appeals in which the legal proceedings would be instituted or are pending. The court of appeals shall not grant a person found to be a vexatious litigator leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of appeals unless the court of appeals is satisfied that the proceedings or application are not an abuse of process of the court and that there are reasonable grounds for the proceedings or application. If a person who has been found to be a vexatious litigator under this section requests the court of appeals to grant the person leave to proceed as described in division (F)(2) of this section, the period of time commencing with the filing with the court of an application for the issuance of an order granting leave to proceed and ending with the issuance of an order of that nature shall not be computed as a part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.

(G) During the period of time that the order entered under division (D)(1) of this section is in force, no appeal by the person who is the subject of that order shall lie from a decision of the court of common pleas or court of appeals under division (F) of this section that denies that person leave for the institution or continuance of, or the making of an application in, legal proceedings in the court of claims or in a court of appeals, court of common pleas, municipal court, or county court.

(H) The clerk of the court of common pleas that enters an order under division (D)(1) of this section shall send a certified copy of the order to the supreme court for publication in a manner that the supreme court determines is appropriate and that will facilitate the clerk of the court of claims and a clerk of a court of appeals, court of common pleas, municipal court, or county court in refusing to accept pleadings or other papers submitted for filing by persons who have been found to be a vexatious litigator under this section and who have failed to obtain leave to proceed under this section.

(I) Whenever it appears by suggestion of the parties or otherwise that a person found to be a vexatious litigator under this section has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from the appropriate court of common pleas or court of appeals to do so under division (F) of this section, the court in which the legal proceedings are pending shall dismiss the proceedings or application of the vexatious litigator.

The State of Ohio contends that the Defendant is a vexatious litigator due to repeated filings of petitions for post-conviction relief and other motions under Ohio Revised Code Section 2953.21. To determine the validity of Plaintiff's claims of vexatious litigation, the Court must review what was done and how it was done by the Defendant.

A previous petition to find the Defendant a vexatious litigator was resolved in favor of the Defendant in Case 2015-0213. In making its finding, the Court issued a warning to the Defendant as follows:

Having reached that conclusion, the Defendant is strongly warned that any further post-conviction relief petitions that do not comply with Section 2953.23(A)(1)(a & b) will be summarily denied by this Court and the issue of being a vexatious litigator will likely be revisited by this Court. Further any petitions for post-conviction relief filed that submit issues previously submitted (denial of right to impartial jury, prosecutorial misconduct, Sixth Amendment violations, ineffective assistance of Counsel, fraud, improper actions of the Coroner, or supplemental death certificate) will be denied and the Court will likely revisit the issue of vexatious litigator.

That decision was journalized on September 24, 2015.

The Court considered the pleadings, the Plaintiff's Exhibits 1-150, the arguments submitted at the hearing, and an additional motion filed by the Defendant in his original murder case on August 31, 2018 questioning the validity of his original arrest.

FINDINGS OF FACT

1. After the decision of September 24, 2015, the Defendant filed eight (8) additional motions in his original criminal case which raised issues that were previously decided.
2. The Defendant filed four (4) new cases in the Common Pleas Court of Brown County, Ohio. All were decided against the Defendant. They all concerned issues that had previously been decided.
3. The Defendant filed five (5) new cases in the Twelfth District Court of Appeals. All were decided against the Defendant. They all concerned issues that had previously been decided.
4. The Defendant filed five (5) new cases in the Ohio Supreme Court. All were decided against the Defendant. They all concerned issues that had previously been decided.
5. The Twelfth District Court of Appeals found the motions and pleadings of the Defendant to be frivolous in Case 2017-01-001.
6. In the July 18, 2018 hearing, the Defendant advised the Court that he just discovered an entirely new issue which he planned to raise. As review of past cases shows, he had already raised that issue twice.
7. In only one instance has any motion or pleading of the Defendant resulted in a change for the Defendant. The Trial Court issued a Judgment Entry of Sentence Nunc Pro Tunc to September 25, 2009 correcting an error in the sentencing entry of the Defendant. It did not change the substance of the Defendant's conviction or his sentence.
8. The most recent filing made by the Defendant raises issues previously decided at least twice.
9. The Defendant has engaged in a pattern of conduct concerning his filings with this Court, the Court of Appeals, and the Ohio Supreme Court, which takes a previously-decided issue and names another defendant or defendants. He raised the issue of wanting the death certificate of his wife changed in motions for post-conviction relief, in a suit against the Coroner, in a quo warranto action and in an action for mandamus. None of these had any merit, and all appeals were denied.
10. The Court understands that the Defendant does not like the fact that he was convicted and that he wants to have that conviction overturned. The Court understands that the Defendant does not like prison and wants to find a way out. His methods and manner of trying to accomplish his goals have run afoul of the vexatious litigator statute.

11. The Court finds that the Defendant has persistently, habitually and without reasonable grounds engaged in vexatious conduct.
12. 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.
13. The actions of the Defendant meet the definitions of a vexatious litigator under Ohio Revised Code Section 2323.52.

CONCLUSIONS OF LAW

1. Defendant Richard Curtis is a vexatious litigator as defined in Ohio Revised Code Section 2323.52.
2. The order finding him to be a vexatious litigator is for an indeterminate period with no termination date.
3. The Defendant may not file any action or motion in Brown County, Ohio courts without obtaining leave of court to do so.
4. The Defendant may not proceed with any actions or motions pending in Brown County, Ohio without obtaining leave of court to do so.
5. All the other prohibitions set forth in Ohio Revised Code Section 2323.52 apply to the Defendant.
6. The Defendant's Motion to Toll and to Hold in Abeyance filed on July 26, 2018 is denied.
7. Court costs to be assessed to the Defendant.

 9/11/18

MAGISTRATE W. KENNETH ZUK

ENTRY APPROVING AND ADOPTING DECISION OF THE MAGISTRATE

IT IS HEREBY ORDERED that the attached MAGISTRATE'S DECISION filed in this matter is approved and shall be the Order of the Court effective fourteen (14) days after the filing of the Decision of the Magistrate unless objections to the Decision of the Magistrate are appropriately and timely filed.



JUDGE SCOTT T. GUSWEILER

A PARTY SHALL NOT ASSIGN AS ERROR ON APPEAL THE COURT'S ADOPTION OF ANY FACTUAL FINDING OR LEGAL CONCLUSION, WHETHER OR NOT SPECIFICALLY DESIGNATED AS A FINDING OF FACT OR CONCLUSION OF LAW UNDER CIV. R. 53 (D)(3)(a)(II), UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FACTUAL FINDING OR LEGAL CONCLUSION AS REQUIRED BY CIV. R. 53(D)(3)(b).

INSTRUCTIONS TO THE CLERK:

Serve upon the following notice of the within Entry:

1. Mary McMullen, *Attorney for Plaintiff*, COPY TO PROSECUTOR'S BOX IN CLERK'S OFFICE
2. Richard Curtis #615995, *Defendant*, Marion Correctional Institution, P.O. Box 57, Marion, OH 43301