

RECEIVED
MAY 22 2008
CLERK OF COURT
SUPREME COURT OF OHIO

FILED
MIAMI COUNTY
COMMON PLEAS COURT
08 MAY 16 AM 9:17
COURT CLERK
CLERK OF COURTS

IN THE COMMON PLEAS COURT OF MIAMI COUNTY, OHIO

MARK STEMPLE

*

CASE NO. 06-725

Plaintiff,

*

vs.

*

DECISION

OLGA DUNINA

*

ORDER/ENTRY

Defendant.

*

* * * * *

This matter is before the Court on both parties' respective Motions for Summary Judgment. By way of background, Plaintiff in the instant action, filed for divorce from the Defendant in March of 2004, in Montgomery County, Ohio. The action was later removed to Miami County, in case number DR04-148. The Defendant opted to represent her own interest pro se. A drawn out litigation ensued, brought on in part by Defendant's filing of 32 separate motions within a 9 month period. The trial court granted the divorce and the Defendant filed an appeal. The Second District Court of Appeals affirmed the trial court's decision in toto. Unhappy with the trial court's ruling and appellate court decision, Defendant has filed numerous other actions against Plaintiff and other parties. See Plaintiff's Exhibits AA and BB.

Plaintiff now brings the instant action and argues that the Defendant should be designated as a vexatious litigator, pursuant to Section 2323.52 of the Ohio Revised Code. That provision defines vexatious conduct in a civil action as any of the following: (a) the

conduct obviously serves merely to harass or maliciously injure another party in a 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; or (c) the conduct is imposed solely for delay.

With respect to Plaintiff's argument that Defendant has engaged in conduct that obviously serves merely to harass or maliciously injure another party to a civil action, Plaintiff has attached numerous exhibits. Exhibit ZZ is a copy of a letter from John M. Ruffolo, bar counsel for the Dayton Bar Association, responding to Defendant regarding her filing on June 28, 2007, yet another grievance against Plaintiff's attorney, James Kirkland. The letter refers to prior grievances submitted by Defendant against Mr. Kirkland, and which were dismissed. Defendant attempts to bring up other matters which Mr. Ruffolo clearly advises are not within the province of the disciplinary counsel and are to be resolved in the domestic relations court. The Court finds such action by the Defendant to be harassing in the least.

Exhibit AAA is a copy of Plaintiff's Complaint, number 2007CV06006, filed June 26, 2007, in the Montgomery County Common Pleas Court, against attorney James Kirkland and six other parties. The allegations against attorney Kirkland relate to civil and professional misconduct, which Defendant was previously advised by bar counsel does not rise to the level of a violation of the Code of Professional Responsibility. Such actions by the Defendant are clearly harassing.

Plaintiff has attached Exhibit DDD, but the Court is unable to decipher its significance since it has no reference to any pleadings or filing in this action. Therefore, the Court will not consider it.

Plaintiff's Exhibit EEE is an affidavit of the Defendant, filed in a proceeding, although not clearly identified, wherein Defendant makes criminal and professional accusations against numerous persons, including but not limited to attorney Kirkland, Defendant's ex-husband Mark Stemple, the Plaintiff in the instant action, Mr. Stemple's former attorney, Tricia Duff, Dayton bar counsel, James Ruffolo, and Judges Hein, Duncan, Young, Valen and Davis, among others. The affidavit is nothing more than a rambling dialogue which clearly serves merely to harass or maliciously injure.

Exhibit GGG is a copy of an e-mail from Defendant sent to the Darke County Common Pleas Court, where Judge Jonathan Hein presides, and who was presiding as an assigned visiting judge to Defendant's divorce action in Miami County. The e-mail accuses Judge Hein of civil and unjust handling of her divorce proceeding, "and violating federal law. The Defendant's e-mail further accuses Plaintiff herein of being involved in drug and firearm trafficking. With no evidence to support such accusations, the Court finds the same to be harassing and maliciously injuring.

Exhibit III is a copy of two complaints filed by the Defendant against attorney Kirkland in the Dayton Municipal Court, Small Claims Division, being Case Numbers 07CVI6266 and 07CVI6269, both filed on August 9, 2007. The complaints seek money damages (lost wages) from attorney Kirkland for the 30 days the Defendant was ordered to serve in jail, alleging that attorney Kirkland caused her to serve the 30 days because he, "influenced the public office/judge by deceit." The second complaint seeks money attorney Kirkland allegedly stole from Plaintiff through a conspiracy theory with Defendant's ex-spouse. In reply to a motion to dismiss filed by attorney Kirkland, Defendant again refers to the, "criminal behavior" by

attorney Kirkland and attaches voluminous exhibits totally irrelevant and immaterial. Such filings are harassing and malicious.

Exhibit KKK is a copy of Defendant's Motion for Reconsideration in Miami County Case Number 06-412. Defendant's attachments and memorandum to the pleading do nothing more than regurgitate all of the Defendant's assertions contained in many of her other filings.

Exhibit OOO is a copy of the Defendant's notice to this Court in this proceeding that she is once again appearing pro se and that she has discharged her attorney, George Katchmer. Although the notice of "Reappearance as Pro Se" is appropriate, the Court notes that the Defendant has attached a lengthy supporting memorandum. In said memorandum, Defendant again makes allegations against her both recently discharged attorney Katchmer, by stating she discharged him in order to protect him from a nervous breakdown and that attorney Katchmer had to make a choice, "either lose his attorney's license, or lose is soul." Defendant further describes the Plaintiff herein and his former attorney Tricia Duff as, "two brain-injured, mentally sick predators, shameless and immoral." Defendant again accuses attorney Kirkland of having a "long history of lying and cheating in the court" and that "absence of shame and criminal behavior . . . Mr. Kirkland is exhibiting disregard to the law - tampered with court evidence, lied to the court, erased his own handwriting in court documents, and submitted tampered documents to the appeal court, etc., etc." Additionally, voluminous other unrelated and immaterial exhibits are attached to the notice. Such comments in the supporting memorandum are clearly inappropriate and can only be done for the purpose to harass or maliciously injure.

Plaintiff's Exhibit CCC is a copy of Defendant's "open letter to dishonest and criminal

attorney Kirkland with suggestion to repent,” filed herein on July 19, 2007. This Court notes that the Defendant caused copies of the within open letter to be sent to “every (still alive) judge he deceived or is going to deceive in my cases; hate/anti-Semitism/prevention in U.S. Department of U.S.A., U.S. Supreme Court; Jewish centers in every synagogue in Dayton, Columbus and Washington; everybody else who has power to stop Mr. Kirkland in his sinful multiple crimes in my cases; Dayton Bar Association; Ohio State Bar Association; U.S. Bar Association; and the United Nations Bar Association, etc.”

In the open letter, the Defendant names attorney Kirkland as being dishonest, immoral and a danger to society. Having been told by the Dayton Bar Association’s bar counsel that Mr. Kirkland’s conduct does not violate any of the provisions of the Rules of Professional Conduct, the Defendant’s actions are malicious and hateful.

This Court will not further discuss Defendant’s actions/conduct as being malicious, but simply refers to Plaintiff’s Exhibits FF, GG, LLL, and HH. Lastly, with respect to Defendant’s conduct as being harassing and malicious, Defendant has through memoranda, briefs and exhibits, continually alleged that Plaintiff herein was mentally unstable, went into homicidal rages, was addicted to sex, and was a male prostitute. See Plaintiff’s Exhibits JJ, YY, AAA, CCC, DDD, EEE, FFF, HHH, III, JJJ, KKK, and OOO. Said exhibits clearly show Defendant’s actions to be harassing and malicious.

The second prong the Court will consider in determining whether the Defendant is a vexatious litigator is whether the conduct is not warranted under existing law and cannot be supported by a good faith argument for extension, modification, or reversal of existing law. In Case Number 2006CV05465, in Montgomery County, Defendant filed an action and alleged

17 individual violations of statutory, procedural and professional rules of conduct against the Defendant's former counsel, Tricia Duff. See Plaintiff's Exhibit BB. The Defendant's complaint is full of allegations of misconduct where there was no actual claim made for relief sought. *Id.* Furthermore, Plaintiff argues there are numerous examples of Plaintiff's continued vexatious conduct that is not warranted under existing law. In Case Number 2004CV08033, in Montgomery County, Defendant committed conduct not warranted under existing law by submitting a motion to transfer two Defendants to Federal District Court, despite the fact that both named parties had already been removed from the case for lack of subject matter jurisdiction. *Id.* In Case Number 2006CA021142, Defendant attempted to add material to a record during appeal. See Plaintiff's Exhibit MM. In Defendant's brief for the above-mentioned case, Defendant committed conduct not warranted by law by attempting to raise a constitutional due process, an equal rights issue, that she failed to bring up at trial. See Plaintiff's Exhibit NN. Further, this allegation contained no causes of action and was mere allegations. *Id.* In Miami County Case Number 2004DR00148, Defendant has habitually and persistently committed conduct not warranted by the law. See Plaintiff's Exhibits BBB, OO, PP, QQ, RR and SS. On August 3, 2005, Defendant filed 17 objections to a pretrial order, including constitutional, procedural and statutory objections. *Id.* However, none of the objections were considered because the Defendant failed to provide a transcript to the Court so that they could be considered. *Id.* Defendant made pleadings for evidence to contradict evidence in a past temporary spousal support hearing, despite the issue already being decided. See Plaintiff's Exhibit PP. Defendant moved to place Mr. Stemple, his past and present attorneys, and the Magistrate in contempt of court for failure to comply with discovery

requests. See Plaintiff's Exhibit QQ. However, the Court had already set the new date by which the interrogatories Defendant was seeking could be answered, and that time had not expired. Id. In Defendant's Motion of September 10, 2004, and September 14, 2004, Defendant moved for Mr. Stemple to be found in contempt concerning prior evidence and testimony given at an earlier hearing. Id. However, her motion was merely an attempt to add facts to the record. Id. Defendant continued an activity not warranted by existing law when in her above action, she asked for an application for a bill of particulars, despite the fact that there is no law in the state of Ohio for a bill of particulars being presented in a domestic relations case. See Plaintiff's Exhibit QQ. On October 5, 2004, the Defendant filed a motion to the Court requesting Mr. Stemple and his weaponry be detained despite the Court having no jurisdiction to prohibit gun ownership and the lack of facts evidenced by Defendant. See Plaintiff's Exhibit RR. On October 21, 2004, nine of the Defendant's objections for appeal of her divorce were held totally without merit. See Plaintiff's Exhibit SS. The Defendant has participated in conduct not warranted under existing law when Defendant claimed that the Court failed in its duty to assist her in her efforts to be a pro se litigant, citing one Supreme Court case and a West Virginia case, despite Ohio law, stating that on matters pertaining to their own procedural law, other courts outside of Ohio are not binding, and pro se litigants are being held to the same general standards as litigants being represented by counsel. Id. Further, evidence of vexatious conduct not warranted under existing law can be seen in Plaintiff's Exhibit UU, when on March 6, 2004, Defendant moved for the Court to force Plaintiff to pay expenses for her former marital home, despite the fact that she had previously filed an appeal that was then pending before the Supreme Court of Ohio, dealing with the

decision regarding the marital assets and liabilities. On August 10, 2006, the Court was forced to once again rule on Defendant's motion to reallocate parental rights in a way inconsistent with the divorce decree of 2004, despite the fact that there were no reasons to modify the agreement. See Plaintiff's Exhibit VV. On August 11, 2006, Defendant moved to change venue due to unfair treatment. Such a motion may be appropriate where a case is improperly filed or a jury panel may be tainted. But in any event, neither of these conditions was met. See Plaintiff's Exhibit WW. Finally, in Case Number 2006-AP-30, the Supreme Court of Ohio found both of the Defendant's objections without merit as her claim to disqualify a judge for disagreement with their ruling of law. The Supreme Court found Defendant's objections were inappropriate without showing bias or prejudice, which the Defendant failed to do. See Plaintiff's Exhibit XX.

Lastly, the Court will consider whether the Defendant has engaged in conduct that is imposed solely for delay. From the exhibits attached to Plaintiff's motion, the Court finds that the Defendant has engaged in conduct that solely imposes the delay on the Court. Since 2004, Defendant has involved Plaintiff in 8 different civil proceedings in Miami and Montgomery Counties. See Plaintiff's Exhibits AA and BB. Additionally, Defendant has recently filed 2007CV06006 against Plaintiff and Plaintiff's counsel, alleging he was in conspiracy to defraud the National City Bank. See Plaintiff's Exhibit AAA. Additionally, Defendant has used 8 different attorneys, including recently dismissed attorney Katchmer in this action. See Plaintiff's Exhibit CC. In one nine month period, in Defendant's divorce proceeding, Defendant filed 32 separate motions. In such motions, the Defendant requested the Court order that the Plaintiff, Mr. Stemple, undergo a mental evaluation. See Plaintiff's Exhibit

WW. After Defendant's motion was denied, Defendant subsequently filed the exact same motion on two occasions. Defendant, throughout the course of her divorce proceeding, filed a motion for reallocation of property rights three times, despite having been denied for lack of authority or stay. See Plaintiff's Exhibits UU and BB. The Defendant has moved the Court to recuse itself on three separate occasions, each time having been denied for lack of merit. See Plaintiff's Exhibit TT. Defendant has also caused undue delay by motioning the Court for an interpreter on September 4, 2004, in Case Number 2004DR00148. See Plaintiff's Exhibit PP. The motion was filed despite the fact she had written numerous pleadings, memoranda, motions and briefs for herself in good English, representing herself in a temporary spousal support hearing where she presented testimony and cross examined witnesses, and as a college graduate here in the United States, has worked in a hospital emergency room. *Id.* Lastly, the Defendant has moved the Court to have the Plaintiff herein, and Plaintiff's former counsel and current counsel, be held in contempt on four separate occasions, despite having been denied on each separate occasion. See Plaintiff's Exhibits QQ, SS, WW. The Court finds that the Defendant has engaged in conduct that imposed solely for delay.

For all the foregoing reasons, the Court finds the Plaintiff's Motion for Summary Judgment well taken and the same be and hereby is granted. At the same time, the Court does not find the Defendant's Motion for Summary Judgment well taken and the same be and hereby is denied.

As a result of this Court granting Plaintiff's Motion for Summary Judgment, it further finds and orders that the Defendant be named a vexatious litigator as defined by Ohio Revised Code 2323.52. As a result, the Court further ORDERS that the Defendant be prohibited from

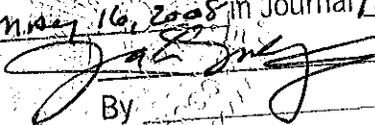
doing any of the following before obtaining leave of Court:

1. Instituting legal proceedings in the Court of Claims or in a Court of Common Pleas, Municipal Court or County Court; and
2. Continuing any legal proceedings that the vexatious litigator had instituted in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court, prior to the entry of this Order, and making any application, other than an application for leave to proceed from the Court; and
3. Making any application, other than an application for leave to proceed under Revised Code Section 2323.52(F), in any legal proceeding instituted by the Defendant or another person in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court.

Costs of this action shall be paid by the Defendant.

IT IS SO ORDERED.

State of Ohio, Miami County, ss
I hereby certify the above to be a true and correct copy of the original Entry, journalized May 16, 2008 in Journal 718 Page 48

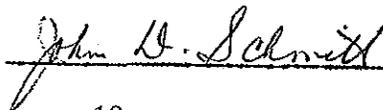

By _____ Clerk
Deputy

cc: James Kirkland
Olga Dunina



John D. Schmitt, Retired Judge recalled to service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Miami County Common Pleas Court for this matter.

✓ Pursuant to Civil Rule 58(B), the Clerk of this Court is hereby directed to serve upon all parties not in default for failure to appear, notice of this judgement and the date of entry upon the journal of its filing.



Judge

*leg
mail*