

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS
GENERAL DIVISION

Mike DeWine, Attorney General, :
Plaintiff, : Case No. 16-CV-002732
vs. : Judge Jeffrey M. Brown
Christopher Foster, :
Defendant. :

**JUDGMENT ENTRY AND DECISION GRANTING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

AND

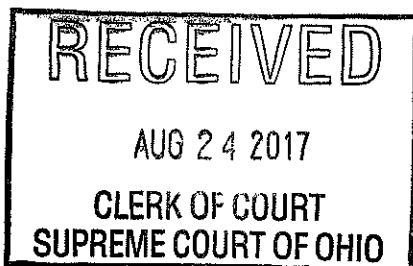
ORDER DECLARING DEFENDANT A VEXATIOUS LITIGATOR

BROWN, J.

This matter comes before the Court on the Motion for Summary Judgment filed by Plaintiff Mike DeWine, Ohio Attorney General, on May 11, 2017. Defendant Christopher Foster ("Foster") failed to respond to Plaintiff's motion as provided for in Loc.R. 21.01. Accordingly, the motion is deemed submitted and ripe for adjudication. For the reasons that follow, the Court finds Plaintiff's Motion for Summary Judgment well-taken and hereby **GRANTED**.

I. FACTUAL BACKGROUND

Plaintiff initiated this action on March 17, 2016 via Complaint seeking an Order declaring Foster to be a vexatious litigator pursuant to R.C. 2323.52. Foster is an inmate in the custody of the Ohio Department of Rehabilitation and Correction ("DRC"). His inmate identification number



is A665579, and he is currently incarcerated at the Southern Ohio Correctional Facility in Lucasville, Ohio¹.

The Court finds it relevant and worthy of noting at the outset that this matter was set for a Final Pre-Trial Conference on April 4, 2017, for which the Court expended considerable effort to arrange for Foster's appearance via telephone. At the time the conference was scheduled to commence, however, Southern Ohio Correctional Facility Paralegal Sherri L. Bishop informed the Court via telephone that Foster refused to exit his cell and participate in the conference.

Since October 2014, Foster has filed thirteen civil actions against public officials, state employees, and governmental agencies in the Ohio Court of Claims. (Mar. 17, 2016 Compl. at ¶ 4.) The defendants named in Foster's various lawsuits include DRC, the Correctional Institution Inspection Committee ("CIIC"), the Governor's Office, Hamilton County Common Pleas Court, the White House, the United States Department of Justice, the Inter-American Commission on Human Rights, the United States "Program Associate Human Rights Watch," and the "International Court of Justice Peace Palace." *Id.* at ¶ 5. The Ohio Attorney General is obligated by law to defend most or all of the lawsuits filed by Foster against state agencies, officials, and employees. (*Id.* at ¶ 15; R.C. 109.02.)

Plaintiff contends that Foster's cases "often repeat[ed] the same baseless allegations," and that "[n]one of those actions have had merit[.]" (May 11, 2017 Plf.'s Mot. for Summ. Jgmt. at 2.) Plaintiff further states that most of Foster's claims and most of the named defendants "were dismissed outright, sometimes for failure to prosecute." *Id.* "In other instances the actions were

¹
<https://appgateway.drc.ohio.gov/OffenderSearch/Search/Details/A665579?enc=A665579%7C%7C%7C%7C%7CA11%7C%7CName%7C-1%7C10%7C>, last accessed August 17, 2017.

dismissed through summary judgment or dismissal for lack of jurisdiction.” *Id.* Additionally, the Court of Claims dismissed a significant number of Foster’s claims pursuant to Civ.R. 12(B)(6). (*See, e.g., Ex. A-2, Conomy Aff., Plf.’s Mot. for Summ. Jgmt.*) What follows is a summation of each of Foster’s Court of Claims cases filed since October 2014 that Plaintiff argues warrant an order declaring Foster a vexatious litigator.

A. Court of Claims Case No. 2014-00807

Foster’s first case in the Court of Claims was filed on October 7, 2014, under Case No. 2014-00807, and named DRC, CIIC, the Inspector General’s Office (IG), and the Governor’s office as defendants. (*Conomy Aff. at ¶ 3; Exhibit A-1.*) Foster’s complaint asserted claims of excessive force by corrections officers and claimed that medical professionals failed to provide appropriate care. *Id.* He also raised challenges to his institutional placement. *Id.*

In response to the defendant’s motions to dismiss and for partial judgment on the pleadings, Foster filed documents captioned as complaints for mandamus, but the Court of Claims lacks jurisdiction to hear such matters. (*Conomy Aff. at ¶ 4; Ex. A-2.*) The Court of Claims granted the motions to dismiss and for partial judgment on the pleadings, finding Foster had not alleged any facts to support his claims against any defendant besides DRC. *Id.* The Court of Claims also held that it lacked jurisdiction to hear several of Foster’s asserted claims against DRC. *Id.* The remaining claims against DRC were disposed of by way of its motion for summary judgment, which included several affidavits from DRC personnel. (*Conomy Aff. at ¶ 5; Ex. A-3.*)

B. Court of Claims Case No. 2014-00856

Foster filed his next case on October 28, 2014, just weeks after his filing of his first action. (*Conomy Aff. at ¶ 6; Ex. A-4.*) The matter was assigned Court of Claims Case No. 2014-00856. *Id.* The complaint’s named defendants included the Attorney General Court of Claims Defense

and private attorney Charles E. Boyk. *Id.* The court dismissed Attorney Boyk because only state agencies and instrumentalities can be sued in the Court of Claims under R.C. 2743.02(E). (Compl. at ¶ 7.)

Plaintiff contends that Foster's complaint contained no allegations of action or omission by the Attorney General or his office. *Id.* The Court of Claims ultimately dismissed the action because Foster failed to submit either the filing fee or a cashier statement to support his poverty affidavit. (Conomy Aff. at ¶ 7; Ex. A-5.)

C. Court of Claims Case No. 2015-00101

Foster's next suit was filed on February 9, 2015, and assigned Court of Claims Case No. 2015-00101. (Conomy Aff. at ¶ 8; Ex. A-6.) In addition to DRC, the IG, and CIIC, the complaint also named the White House and the U.S. Department of Justice (DOJ) as defendants. *Id.* Foster made various allegations of mistreatment including denial of access to the law library, medical care, and the use of toilets. (Ex. A-8.) He also claimed that DRC refused to respond to his informal complaints and grievances, and that windows in the correctional facility were often left open, allowing cold air to enter. *Id.*

A February 23, 2015 Magistrate's Order dismissed the White House and DOJ for lack of jurisdiction, noting that only state agencies and instrumentalities can be defendants in original actions in the Court of Claims. (Conomy Aff. at ¶ 9; Ex. A-7.) This would be the second entry in Foster's cases where the Court of Claims explained to him that only State of Ohio entities or instrumentalities may be sued in the Court of Claims.

Foster's claims against CIIC and the IG were dismissed on June 19, 2015, because the complaint was "devoid of factual allegations" pertaining to those defendants. (Entry of Dismissal,

Conomy Aff. at ¶ 10; Ex. A-8, p. 2.) The claims against DRC relating to Foster's conditions of confinement were dismissed as matters beyond the court's jurisdiction. *Id.* at 3.

D. Court of Claims Case No. 2015-00360

The next action was filed on April 16, 2015, under Court of Claims Case No. 2015-00360. (Conomy Aff. at ¶ 11; Ex. A-9.) Once again Foster named DRC, CIIC, and the IG as defendants. *Id.* And for the second time Foster also named the White House and DOJ as defendants, despite the action being instituted after the Court of Claims informed Foster via entry dismissing those defendants in his previous action that the court lacked jurisdiction over those specific parties and the third such time telling him it lacked jurisdiction over non-state agencies and instrumentalities. (*Compare* Ex. A-7, A-10.)

Foster's complaint—which Plaintiff asserts is a reiteration of many of the allegations in his three previous cases—claims a variety of incidents of mistreatment by DRC employees. He made allegations of constant assault and torture by DRC staff, and claimed DRC tampered with his mail and failed to respond to his grievances. As in previous actions, Foster also challenged his institutional placement, and the location and cleanliness of his cell and surrounding area. And he also alleged, once again, that DRC denied him access to the law library and medical care. (Ex. A-11.)

As before, the Court of Claims dismissed the White House and DOJ as named defendants, *sua sponte*. (Conomy Aff. at ¶ 12; Ex. A-10.) CIIC and the IG were dismissed as parties by way of motion for the same reasons they were dismissed from the previous action, i.e., Foster's complaint was devoid of factual allegations against them. (Conomy Aff. at ¶ 13; Ex. A-11.) Foster then moved for and was granted dismissal without prejudice pursuant to Civ.R. 41(A)(2). (Conomy Aff. at ¶ 14; Ex. A-12.)

E. Court of Claims Case No. 2015-00381

Foster filed his next case on April 20, 2015, which was assigned Court of Claims Case No. 2015-00381. (Conomy Aff. at ¶ 15; Ex. A-13.) As before, Foster sued DRC, CIIC, the IG, the White House, and DOJ. His complaint again alleged denial of access to the law library, telephones, and medical aid. (Ex. A-15.) He also complained that a mentally ill neighboring prisoner's "ranting and raving" was causing him sleep deprivation. *Id.* For the same reasons as his previous actions, this action was also dismissed—first as to the White House and DOJ, sua sponte, and then as to the state defendants by way of motion. (Conomy Aff. at ¶¶ 16-17; Exs. A-14 and A-15.)

F. Court of Claims Case No. 2015-00419

Eight (8) days after filing his immediately preceding case, Foster filed another case against the same defendants, and also named Southern Ohio Correctional Facility ("SOCF"). (Conomy Aff. at ¶ 18; Ex. A-16.) This action was filed under Court of Claims Case No. 2015-00419. *Id.* Foster's complaint here alleged that DRC employees denied him recreation time, phone privileges, showers on weekends, and medical care. (Ex. 18 at 1.) He also claimed that DRC employees placed a television in front of his cell and forced him to watch "homosexual shows and sports" that are "offensive." *Id.* Among his conditions of confinement claims was the allegation that he might miss getting coffee if he took a shower at the wrong time. (Ex. 16.) Foster further claimed that he received small food portions which he was forced to eat with dirty utensils. (Ex. 18 at 1.) Finally, Foster asserted that DRC threatened him with physical harm. *Id.*

In accordance with what had become the pattern and precedent, and for the fifth time, the Court of Claims sua sponte dismissed the White House and DOJ. The court also dismissed SOCF as being "surplusage." (Conomy Aff. at ¶ 19; Ex. A-17.) And it once again dismissed CIIC and the IG because Foster's complaint did not include any allegations pertaining to them. (Conomy

Aff. at ¶ 20; Ex. A-18.) Finally, the Court of Claims then stayed the action on April 8, 2016, based upon on the filing of the case sub judice. (Conomy Aff. at ¶ 21.)

G. Court of Claims Case No. 2015-00535

Foster's next action was filed on June 1, 2015, under Court of Claims Case No. 2015-00535. This time he added Hamilton County Court of Common Pleas and the Inter-American Commission on Human Rights ("IACHR") as defendants, in addition to DRC, the White House, and DOJ. (Conomy Aff. at ¶ 22; Ex. A-19.) The complaint alleged that Hamilton County Common Pleas Court Judge Kubicki issued a sentencing entry finding that Foster pleaded guilty to several criminal charges, but Foster claimed he did not accept any plea agreement. (Ex. 21 at 2.) Foster also alleged that he was sentenced to three (3) years for weapon under disability, but claimed he had already fully served such sentence. *Id.* Foster's complaint further stated that he was in custody for eight (8) years beyond the maximum permissible length of confinement. *Id.*

The Court of Claims stated that it appeared Foster was challenging the sentencing court's jurisdiction to hear the criminal charges against him. *Id.* The court characterized Foster's complaint as one for defamation and also a claim that the defendant judge was liable to Foster for false imprisonment. *Id.*

As it did in all but the first of Foster's previous cases, the Court of Claims sua sponte dismissed the non-state entity defendants for lack of jurisdiction. (Conomy Aff. at ¶ 23; Ex. A-20.) Plaintiff argues that by this point in his litigation career, Foster must have known this would be the outcome, i.e., the Court of Claims will sua sponte dismiss any non-state entities Foster sued. The court disposed the claims against DRC by judgment on the pleadings. (Conomy Aff. at ¶ 24; Ex. A-21.)

H. Court of Claims Case No. 2015-00647

Foster's next-filed case named only DRC as a defendant, and once again asserted a claim for excessive use of force. (Conomy Aff. at ¶ 25; Ex. A-22.) The action was filed on July 9, 2015, and assigned Court of Claims Case No. 2015-00647. *Id.* The Court of Claims stayed the matter pending the result of this action. (Conomy Aff. at ¶ 26; Ex. A-23.)

I. Court of Claims Case No. 2015-00886

Foster's action assigned Court of Claims Case No. 2015-00886 was filed on October 15, 2015, and, as with the immediately preceding action, DRC was the sole defendant. (Conomy Aff. at ¶ 27; Ex. 24.) The Court of Claims stated that Foster's complaint alleged a DRC nurse gave him an "unknown pill after leading [Foster] to believe [his] pain med was reordered." (Ex. 25 at 2.) Foster claimed he suffered "severe side effects" from the "unknown pill" and has not recovered. *Id.* Additionally, he alleged that his food trays are "consistently replaced breakfast and lunch" [sic] and no one would correct the problem. *Id.* Foster claimed this amounted to "emotional distress, assault (and) medical malpractice." *Id.*

Foster moved for default judgment in the case, notwithstanding DRC's timely filed motion to dismiss. The Court of Claims denied Foster's motion for default, and the claims regarding his confinement conditions were dismissed as they were in his prior cases. (Conomy Aff. at ¶ 28; Ex. A-25.) The Court of Claims stayed the remaining claims. (Conomy Aff. at ¶ 29; Ex. A-26.)

J. Court of Claims Case No. 2015-00899

On October 19, 2015, just four days after initiating the prior action, Foster filed yet another Court of Claims case in which he sought to sue non-state defendants. Specifically, in Court of Claims Case No. 2015-00899 Foster's complaint named the White House, DOJ and IACHR as defendants, in addition to DRC and the Governor. (Conomy Aff. at ¶ 30; Ex. A-27.) In this action

he also added the “United States Program Associate Human Rights Watch” as a named defendant. *Id.* Plaintiff again urges that by this point in Foster’s career of Court of Claims litigation he must have known that court lacked jurisdiction over said defendants, given his repeated unsuccessful attempts to bring claims against the same non-state parties. (*See* Plf.’s Mot. for Summ. Jgmt. at 7.)

Foster’s complaint in this action alleged that he was “illegally sentenced” due to, as he claimed, a lack of a warrant for arrest and the fact that he is innocent of the crimes for which he was charged. (Ex. 29 at 2.) Foster sought to once again impose liability for false imprisonment and also alleged, again, that his sentencing entry was facially invalid. *Id.* In addition to the false imprisonment claim, Foster yet again made allegations that he is either denied access to showers or forced to take cold showers, and that unidentified persons tampered with his food. *Id.*

The Court of Claims also identified a number of criminal charges Foster lodged against DRC: unlawful restraint, R.C. 2905.03; sham legal process, R.C. 2921.52; criminal simulation, R.C. 2913.32; improper correction of a judgment of conviction, R.C. 2929.191; inciting violence, R.C. 2917.01; menacing, R.C. 2903.22; inducing panic, R.C. 2917.31; criminal liability of organizations, R.C. 2901.23; and patient abuse and neglect in a care facility, R.C. 2903.33. *Id.* Finally, Foster claimed that the Governor is aware of these alleged crimes but has failed to intervene. *Id.*

Unsurprisingly, the non-state defendants were dismissed sua sponte, just as they were in all previous cases in which Foster named a non-state entity as a defendant. (Conomy Aff. at ¶ 31; Ex. A-28.) And, as had also happened several times before, the claims for false imprisonment and conditions of confinement were disposed of on a motion to dismiss. (Conomy Aff. at ¶ 32.; Ex. A-29.)

K. Court of Claims Case No. 2015-00928

Just nine days later, on October 28, 2015, Foster filed a new complaint which was assigned Court of Claims Case No. 2015-00928. He yet again sought to join the White House, DOJ, and IACHR along with DRC and the Governor, but this time added the International Court of Justice as a named defendant. (Conomy Aff. at ¶ 33, Ex. A-30.) Foster again alleged a false imprisonment claim along with improper use of force. *Id.* The Court of Claims ultimately dismissed the action due to Foster's failure, once again, to provide either the filing fee or proper poverty documentation. (Conomy Aff. at ¶ 34; Ex. A-31.)

L. Court of Claims Case No. 2015-00968²

As with nearly every previous case, Foster named the White House, DOJ, and IACHR as defendants along with DRC in Case No. 2015-00968, filed on November 13, 2015. (Conomy Aff. at ¶ 35; Ex. A-32.) And like nearly all the others, the complaint filed to initiate this action alleged that Foster was falsely imprisoned and challenged his conditions of confinement. *Id.*

As a consequence for his failure to comply with orders to file a statement of connected action form, the Court of Claims dismissed the case without prejudice pursuant Civ.R. 41(B)(1). (Conomy Aff. at ¶ 36; Ex. 33.) Foster appealed the dismissal to the Tenth District Court of Appeals. (Compl. at ¶ 13.) His notice of appeal was filed on March 11, 2016, and assigned 10th District Case No. 16AP-183. (*Id.*; *see also* Docket, 10th Dist. Case No. 16AP-183.) On March 25, 2017, the Tenth District dismissed the appeal for lack of final appealable order. (Docket, Case No. 16AP-183, available at <https://cdcfcis.co.franklin.oh.us/CaseInformationOnline/Welcome.jsp>, last accessed August 18, 2017.)

² Plaintiff's Motion for Summary Judgment incorrectly identifies the case number as 2015-00535 in the heading for the summary of this particular Court of Claims case.

M. Court of Claims Case No. 2016-00108

The last of Foster's many complaints that are the generative force for the instant matter was filed on February 12, 2016, and assigned Court of Claims Case No. 2016-00108. (Conomy Aff. at ¶ 37; Ex. A-34.) He alleged in this matter that Court of Claims Magistrate "Robert Van Schoyck * * * has shown an inability in other litigations [sic] to act without tyrannical [sic] * * * favor," and also sought a change of venue. *Id.* As before, Foster's complaint asserted that he was falsely imprisoned and denied medical care, and he once again challenged other conditions of his confinement. *Id.* The Court of Claims stayed the action pending the results of the case sub judice. (Conomy Aff. at ¶ 38; Ex. A-35.)

II. SUMMARY JUDGMENT STANDARD

Under Civ.R. 56(C), summary judgment is appropriate when the moving party is entitled to judgment as a matter of law because there is no dispute of material fact. *Temple v. Wean United, Inc.*, 50 Ohio St.2d 317, 327, 364 N.E.2d 267 (1977). The party moving for summary judgment must inform the trial court of the basis for the motion and point to parts of the record that demonstrate the absence of a genuine issue of material fact, *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 662 N.E.2d 264 (1996), and it must do so in the manner required by Civ.R. 56(C). *Castrataro v. Urban*, 10th Dist. Franklin No. 03AP-128, 2003-Ohio-4705, ¶ 14. Once the moving party has met this burden, the non-moving party's reciprocal burden to point to parts of the record demonstrating an issue of material fact is triggered. *Dresher* at 293. "[S]ummary judgment is appropriate if the nonmoving party does not respond, by affidavit or as otherwise provided in Civ.R. 56, with specific facts showing that a genuine issue exists for trial." *Davis & Meyer Law, Ltd. v. Pronational Ins. Co.*, 10th Dist. Franklin No. 06AP-730, 2007-Ohio-3552, ¶ 12.

III. ANALYSIS

A. Standard of Review

R.C. 2323.52 provides the authority for a common pleas court to designate a person as a vexatious litigator. R.C. 2323.52(A)(3) defines “vexatious litigator” as:

[A]ny 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 conduct” is defined as conduct of a party in civil actions 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.

R.C. 2323.52(A)(2)(a)-(c).

The above-cited definition of vexatious conduct mirrors the definition of frivolous conduct in civil actions according to R.C. 2323.51. Under R.C. 2323.51(A)(2)(a), which expressly applies to inmates in civil actions, “frivolous conduct” is that which 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).

With respect to an inmate's commencement of a civil action against a government entity or employee, the inmate's institution of the action constitutes frivolous conduct under R.C. 2323.51(A)(2)(b) when any of the following apply:

(i) The claim that is the basis of the civil action fails to state a claim or the issues of law that are the basis of the appeal fail to state any issues of law.

(ii) It is clear that the inmate cannot prove material facts in support of the claim that is the basis of the civil action or in support of the issues of law that are the basis of the appeal.

(iii) The claim that is the basis of the civil action is substantially similar to a claim in a previous civil action commenced by the inmate or the issues of law that are the basis of the appeal are substantially similar to issues of law raised in a previous appeal commenced by the inmate, in that the claim that is the basis of the current civil action or the issues of law that are the basis of the current appeal involve the same parties or arise from the same operative facts as the claim or issues of law in the previous civil action or appeal.

R.C. 2323.51(A)(2)(b)(i)-(iii).

The Supreme Court of Ohio has expressed that the vexatious litigator statute serves an important function:

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

Mayer v. Bristow, 2000-Ohio-109, 91 Ohio St.3d 3, 13.

The high court further expressed:

* * * vexatious litigators oftentimes use litigation, with seemingly indefatigable resolve and prolificacy, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as 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. Thus, the people, through their representatives, have a legitimate, indeed compelling, interest in curbing the illegitimate activities of vexatious litigators.

The relationship between these goals and the methods employed in R.C. 2323.52 to achieve them is substantial. At its core, the statute establishes a screening mechanism that serves to protect the courts and other would-be victims against frivolous and ill-conceived lawsuits filed by those who have historically engaged in prolific and vexatious conduct in civil proceedings. It provides authority to the court of common pleas to require, as a condition precedent to taking further legal action in certain enumerated Ohio trial courts, that the vexatious litigator make a satisfactory demonstration that the proposed legal action is neither groundless nor abusive. Thus, "the vexatious litigator statute bears a real and substantial relation to the general public welfare because its provisions allow for the preclusion of groundless suits filed by those who have a history of vexatious conduct."

Id. at 13-14. (Citations omitted).

R.C. 2323.52(B) outlines the procedure to institute a civil action seeking a vexatious litigator designation:

A person * * * 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 * * * 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.

As Plaintiff correctly notes, there is no magic number of frivolous lawsuits that must be filed before crossing the vexatious litigation threshold. The Tenth District has held that a vexatious litigator designation may be based upon a person's behavior in a single civil action or multiple civil actions. *Earthy v. Farley*, 10th Dist. Franklin No. 02AP-1046, 2003-Ohio-3185, ¶48. The Tenth District determined that appellant's:

repetitive arguments and unrelenting pleadings on issues already decided have congested the judicial process and hindered the trial court's and receiver's lawful duties. His persistent and tedious grievances inserted into every pleading of every type have amounted to an unnecessarily massive record. His tormenting of every party whom he sees as aiding his wife has risen to the level of compulsiveness.

Id. at ¶ 49.

Significantly, the Tenth District quoted with approval the following passage from

Borger v. MrErlane, 1st Dist. No. C-01026, 2001-Ohio-4030:

* * * vexatious conduct, as defined in R.C. 2323.52(A)(2)(a), requires proof that [the appellant's] conduct serves merely to harass or maliciously injure another party to the civil action. It is not necessary, therefore, that [the appellant] intends for her conduct to be harassing, or that she not sincerely believe in the justness of her cause. Rather, it is sufficient that her conduct served the purpose, or has the effect, of harassing [the appellee] by obligating her to respond to a legal action for which there is no objective, reasonable grounds.

Id. at ¶ 51. (Emphasis sic).

B. Application

In arguing that the Court should declare Foster a vexatious litigator, Plaintiff contends that his career of litigation transcends the bounds of vexatious conduct. He asserts that the mere filing of 13 actions in less than 18 months alone demonstrates that Foster's conduct is "habitual and persistent." The fact that each and every claim Foster asserted failed (save for the actions stayed pending the outcome of this action), Plaintiff argues, clearly proves that he lacked "reasonable grounds" to bring the actions in the Court of Claims. R.C. 2323.52(A)(3).

Plaintiff also argues that Foster's numerous lawsuits since October 2014 have "served merely to harass or maliciously injure" the defendants in those civil actions. Plaintiff claims these

lawsuits are “not warranted under existing law and cannot be supported by any good faith argument for an extension, modification, or reversal of existing law.” R.C. 2323.52(A)(2)(a) and (b).

After careful consideration and applying the appropriate standard of review and principles of law, the Court agrees. The evidence in the record clearly demonstrates that Foster’s activity constitutes vexatious conduct pursuant to R.C. 2323.52. His litigation appears to be nothing more than a campaign to harass public officials, state employees, and the Ohio Department of Rehabilitation and Correction, among others. This also applies to the numerous non-state defendants Foster repeatedly named in his complaints. It is important to note that, as held by the *Farley* court, a finding of vexatious conduct is not dependent upon whether the litigant intended for his conduct to be harassing. Rather, the focus is whether the conduct serves the purpose of or has the effect of harassing others by obligating them to respond to lawsuits for which there are no objective, reasonable grounds. Thus, the Court does not look to Foster’s subjective aim and instead examines the effect his lawsuits have had upon the opposing parties and the judicial system. It is clear that Foster’s filings had a harassing and injurious effect, especially in the form of the costs borne by the state and the efforts expended by counsel in performing Plaintiff’s legal obligation to defend against Foster’s 13 separate actions.

There are no genuine issues of fact regarding Foster’s habitually persistent litigious behavior. The record of cases and filings speaks for itself. He repeatedly asserted the same claims against the same parties, and continued to do so multiple times, even after the Court of Claims found those same claims against those same parties to be without merit and lacking any factual or evidentiary support. Furthermore, despite the Court of Claims time and again dismissing non-state defendants from his cases and informing him that the court lacked jurisdiction over said parties, Foster nevertheless named the White House and DOJ in nine (9) separate actions. He named other

defendants that were not state entities or instrumentalities as well. For example, Foster named the Inter-American Commission on Human Rights (IACHR) in four (4) separate cases, and also named the “International Court of Justice,” which by its name alone is clearly not a state entity.

This Court consciously chooses “named as defendants” and similar language in this Order, rather than employ “filed claims against” or similar words to characterize Foster’s filings. The reason for this stems from many the Court of Claims entries filed as exhibits to Plaintiff’s counsel’s affidavit in support of summary judgment. These entries show that throughout the history of Court of Claims actions giving rise to the present case, Foster continually named parties as defendants on the cover page of his complaints but then failed to include any specific factual allegations pertaining to a particular named defendant, much less a set of facts concerning the defendant that would support a claim upon which relief could be granted. Such complaints are emblematic of frivolous conduct that “clogs the court dockets, results in increased costs, and oftentimes is a waste of judicial resources—resources that are supported by the taxpayers of this state.” *Mayer*, supra.

When one objectively examines his filings it becomes readily apparent that those who, in the performance of their jobs, become involved with Foster, (e.g., corrections officers, intuitional medical personnel, other DRC employees, and court staff and judges) those persons are then sued and accused of egregious acts. The Court finds that Foster’s filings serve merely to harass these parties, are not warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law. *See* R.C. 2323.52(A)(2)(a) and (b). Further, the Court finds that Foster’s filings consist of allegations or other factual contentions that have no evidentiary support or are not warranted by the evidence, and it is clear he cannot prove material facts in support of the nearly identical frivolous claims that he repeatedly raised in 13 separate cases in an 18-month period. *See* R.C. 2323.51(A)(2)(a) and (b). Indeed, in its entry

granting the defendants' motion to dismiss, the Court of Claims Judge stated: "Upon review of the complaint, the court is unable to discern a single cognizable claim for relief. Plaintiffs complaint is nothing more than a rambling and disjointed discourse devoid of any factual allegations supporting a claim for relief against defendants." (Compl. at ¶ 9; Conomy Aff. at ¶ 17; Ex. A-15.) This is exactly the type of conduct that R.C. 2323.52 is designed to prevent.

As noted by the Supreme Court of Ohio, vexatious litigators are individuals who "use litigation, with *seemingly indefatigable resolve and prolificacy*, to intimidate public officials and employees or cause the emotional and financial decimation of their targets. Such conduct, which employs court processes as amusement or a weapon in itself, undermines the people's faith in the legal system." *Mayer*, supra at 13. (Emphasis added). Foster's litigious behavior falls squarely within this description.

IV. CONCLUSION

Upon careful consideration of all the evidence before it, the Court finds Foster's conduct to be that which the vexatious litigator statute aims to thwart. Accordingly, the Court finds that Foster has engaged in vexatious conduct as set forth in R.C. 2323.52(A)(2)(a)-(c), and thus a vexatious litigator designation is appropriate under R.C. 2323.52(A)(3). Therefore, Plaintiff's Motion for Summary Judgment is well-taken and hereby **GRANTED**. Defendant Christopher Foster is hereby **DECLARED A VEXATIOUS LITIGATOR**.

Pursuant to R.C. 2323.52(D)(1), Defendant Christopher Foster is 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 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.

Therefore, it is FURTHER ORDERED, pursuant to R.C. 2323.52(D)(1)(b), Foster is prohibited from continuing any legal proceedings he had instituted in the Court of Claims or a court of common pleas, municipal court, or county court, without first obtaining leave of this Court. Pursuant to R.C. 2323.52(F)(1), the Court:

shall not grant [Foster] 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 [this Court] 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.

It is FURTHER ORDERED that, pursuant to R.C. 2323.52(H), the clerk of the court shall send a certified copy of this Order to the Clerk of the Supreme Court of Ohio 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 Foster without first obtaining leave to proceed under this section.

IT IS SO ORDERED.

Copy electronically to:
All counsel.

Copy via ordinary mail to:
Christopher Foster, A665579, Southern Ohio Correctional Facility, P.O. Box 45699, Lucasville,
OH 45699.

Franklin County Court of Common Pleas

Date: 08-22-2017
Case Title: OHIO STATE ATTORNEY GENERAL MIKE DEWINE -VS- CHRISTOPHER FOSTER INMA
Case Number: 16CV002732
Type: ORDER

It Is So Ordered.



/s/ Judge Jeffrey M. Brown

Electronically signed on 2017-Aug-22 page 22 of 22

THE STATE OF OHIO
Franklin County, ss

MARYELLEN O'SHAUGHNESSY, Clerk
OF THE COURT OF COMMON
PLEAS WITHIN AND FOR
SAID COUNTY.

HEREBY CERTIFY THAT THE ABOVE AND FORE-
GOING IS TRULY TAKEN AND COPIED FROM THE
ORIGINAL *Order Declaring Defendant*
NOW ON FILE IN MY OFFICE *a Vexatious
Litigator*
WITNESS MY HAND AND SEAL OF SAID COUNTY
THIS *23* DAY OF *Aug*, A.D. 20*17*
MARYELLEN O'SHAUGHNESSY, Clerk
By *SM* Deputy