

I, Linda H. Frary, Clerk of Courts
Richland County, Ohio, hereby certify that
the foregoing is a true and correct copy of the

ORDER

filed with me

4-20-15

W. J. Hill

Deputy Clerk of Courts

RICHLAND COUNTY
CLERK OF COURTS
FILED

2015 APR 20 P 2:23

IN THE COMMON PLEAS COURT OF RICHLAND COUNTY, OHIO

MARK GRIFFIN

Case No. 14 CV 0607 R

LINDA H. FRARY
CLERK OF COURTS

Petitioner

v.

**ORDER RESOLVING
ALL PENDING MOTIONS**

MS. GILLECE, WARDEN'S ASSISTANT,

Respondent

This Petition for Writ of Mandamus is before the Court upon the following motions: 1). the Respondent's July 18, 2014 Motion for Judgment on the Pleadings; 2) the Petitioner's July 24, 2014 Motion to Respond to the Respondent's Counterclaims; Affidavit of Truth, and Correction of Misunderstood Filings; and Motion for Leave to Amend Petition; 3) the Petitioner's August 8, 2014 Motion for Judgment and/or Default on the Pleadings; 4) the Petitioner's August 28, 2014 Motion for Summary Judgment; 5) the Petitioner's December 2, 2014 Motion for Statutory Damage Award of Attorney's Fees; and the \$1,000 for Each Public Records Request That's Officially Under Default Judgment; 6) the Respondent's December 9, 2014 Motion for Summary Judgment; 7) the Petitioner's Motion to Strike and; 8) the Petitioner's January 29, 2015 Memorandum in Support of Default. In evaluating these motions, the Court has considered the all of the motions filed and the file as a whole. The court has also considered the relevant Ohio law.

Journalized on the court's
docket on 4-21-15

W. J. Hill
Deputy Clerk

On June 18, 2014, the Petitioner in this case, an inmate at Richland Correctional Institution, filed a petition for a Writ of Mandamus under R.C. § 149.43(C), alleging that the Respondent, an assistant to the warden at Richland Correctional Institution, failed to comply with the Petitioner's requests for public records. The Respondent was successfully served with this petition on June 23, 2014 and she filed a timely answer and counterclaim on July 17, 2014, requesting that this Court find that the Petitioner is a vexatious litigator pursuant to R.C. § 2323.52.

On July 18, 2014, the Respondent filed a Motion for a Judgment on the Pleadings alleging several technical failures within the Petitioner's petition. The Petitioner responded on July 24, 2014, with an amended affidavit and a motion to amend his original petition. At the same time, he filed a motion in response to the Respondent's counterclaims. On August 8, 2014, the Petitioner filed his own Motion for a Judgment on the Pleadings. This Court held a non-oral hearing on these motions on August 18, 2014, and now makes the following findings on the motions for judgment on the pleadings.

1. The Petitioner's initial petition was wrongly captioned. Ohio Revised Code § 2731.04 requires that a writ of mandamus be filed in the name of the state on the relation of the person applying. The Supreme Court of Ohio allows for the dismissal of petitions for writs of mandamus for failure to follow the mandates of R.C. § 2731.04.¹

¹ See *Gannon v. Gallagher*, 145 Ohio St. 170, 171, 352, 60 N.E.2d 666 (1945); *Maloney v. Court of Common Pleas of Allen Cty.*, 173 Ohio St. 226, 227, 181 N.E.2d 270 (1962); *Maloney v. Sacks*, 173 Ohio St. 237, 238, 181 N.E.2d 268 (1962).

2. On July 24, 2014, the Petitioner filed a motion for leave to amend his petition in order to comply with R.C. § 2731.04 after the Respondent raised this issue in her answer. "A party may amend its pleading once as a matter of course within twenty-eight days after serving it or, if the pleading is one to which a responsive pleading is required within twenty-eight days after service of a responsive pleading or twenty-eight days after service of a motion under Civ.R. 12(B), (E), or (F), whichever is earlier. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave."² Therefore, the Petitioner can only amend his petition by leave of this Court or with written consent of opposing counsel.
3. When a failure to comply with R.C. 2731.04 is raised and the petitioner files a motion for leave to amend the caption of the complaint to specify that the mandamus action is brought in the name of the state on their relation, the Supreme Court has granted leave to amend so as to resolve cases on the merits rather than on a pleading deficiency.³ The Court would, therefore, allow this amendment.
4. However, the Petitioner's initial petition fails to comply with R.C. § 2969.25. This code section specifically requires inmates commencing civil action against any governmental entity or employee to file an affidavit at the commencement of the action. This affidavit shall include, 1) a brief

² Ohio Civ.R. 15(A).

³ *State ex rel. Rust v. Lucas Cty. Bd. of Elections*, 100 Ohio St. 3d 214, 2003-Ohio-5643, 797 N.E.2d 1254, ¶6; *State ex rel. Huntington Ins. Agency, Inc. v. Duryee*, 73 Ohio St.3d 530, 533, 653 N.E.2d 349 (1995).

description of the nature of the civil action or appeal; 2) the case name, case number, and the court in which the civil action or appeal was brought; 3) the name of each party to the civil action or appeal; and 4) the outcome of the civil action or appeal, including whether the court dismissed the civil action or appeal as frivolous or malicious, whether the court made an award against the inmate or the inmate's counsel of record for frivolous conduct, and, if the court so dismissed the action or appeal or made an award of that nature, the date of the final order affirming the dismissal or award. The Petitioner did file such an affidavit at the commencement of his action; however, he only listed five civil actions for the past five years and he failed to include descriptions of those cases within his affidavit. The Respondent raised this issue in her Motion for Judgment on the Pleadings, alleging that the Petitioner failed to include eleven additional civil cases that he has initiated within the last five years.

5. Failure to file an accurate affidavit described in R.C. § 2965.25 provides grounds for immediate dismissal of the petition.⁴ "The requirements of R.C. 2969.25 are mandatory, and failure to comply with them subjects an inmate's action to dismissal."⁵
6. The Petitioner filed an amended affidavit on July 24, 2014, listing fourteen civil actions that he has initiated within the last five years. However, his

⁴ *State ex rel. Nesbitt v. ODRC*, 5th Dist. Richland No. 2009CA00136, 2010-Ohio-813, ¶ 5, citing *State ex rel. Zanders v. Ohio Parole Bd.*, 82 Ohio St.3d 421, 696 N.E.2d 594 (1998); *State ex rel. Alford v. Winters*, 80 Ohio St.3d 285, 685 N.E.2d 1242 (1997). See also, *State ex rel. Foster v. Belmont Cty. Court of Common Pleas*, 107 Ohio St.3d 195, 2005-Ohio-6184, 837 N.e.2d 777; *State ex rel. Qualls v. Story*, 104 Ohio St.3d 343, 2004-Ohio-6565, 819 N.E.2d 701, ¶ 3.

⁵ *State ex rel. Norris v. Giavasis*, 100 Ohio St.3d 371, 2003-Ohio-6609, 800 N.E.2d 365, ¶ 4, quoting *State ex rel. White v. Bechtel*, 99 Ohio St.3d 11, 2003-Ohio-2262, 788 N.E.2d 634, ¶5.

new affidavit also fails to conform to the mandates of R.C. § 2965.25. He failed to include a brief description of the nature of each civil action and he failed to include any information regarding the disposition of these cases. Failure to include a brief description of the nature of each case constitutes a failure to comply with requirements of this code section.⁶

7. The Petitioner argues that he should be allowed to amend his Affidavit because he is not an attorney and he should not be held to the same standards as an attorney. However, the requirements of R.C. § 2969.25 only apply to inmates filing in a pro se capacity. The legislature has set out these rules specifically for inmates, not for attorneys. Further, the Petitioner has had three of his four prior filings within this Court dismissed for the exact same failure to truthfully report his prior civil actions.
8. Even if the Petitioner's Amended Affidavit were sufficient under R.C. § 2969.25, it would not prevent his petition from being dismissed. Ohio Revised Code § 2969.25 requires that the affidavit be filed "at the time that an inmate **commences** a civil action." The Supreme Court has held that the wording of the statute does not allow for amendments once the action has commenced.⁷
9. Therefore, the Respondent's Motion for a Judgment on the Pleadings is Granted and the Petitioner's petition for Writ of Mandamus is dismissed. The Petitioner's other motions regarding the arguments in his petition are, therefore, all denied as moot.

⁶ *State ex rel. Graham v. Findlay Mun. Court*, 106 Ohio St.3d 63, 2005-Ohio-3671, 831 N.E.2d 435.

⁷ *Fuqua v. Williams*, 100 Ohio St.3d 211, 213, 2003-Ohio-5533, 797 N.E.2d 982.

This leaves the Respondent's counterclaim requesting that this Court find that the Petitioner is a vexatious litigator. The Respondent filed a Motion for Summary Judgment, pursuant to Civil R. 56(C), on December 9, 2014. The Petitioner answered on December 15, 2014, with a motion to strike the Respondent's motion alleging procedural defects because the Respondent's motion was filed after the Non-Oral hearing on August 18, 2014. The August 18, 2014, hearing only involved the Motions for Judgment on the Pleadings and, therefore, any timelines for filing motions and responses for the non-oral hearing only involved the Motions for Judgment on the Pleadings. The Petitioner also filed his Motion for Summary Judgment after the date set for that non-oral hearing. A Motion for Summary Judgment can be filed at any time after the expiration of time under the rules for the filing of a responsive pleading by the adverse party.⁸

The Petitioner did not respond to any of the contentions within the Respondent's Summary Judgment Motion. The Petitioner did not respond to the Respondent's counterclaim other than to allege that the Respondent could not claim the Petitioner to be a vexatious litigator because the Respondent failed to comply with the Petitioner's public records request. Therefore, the facts presented by the Respondent in support of Summary Judgment have not been contested. The Respondent has attached extensive court documentation as evidence in support of her motion for summary judgment.

1. A trial court may not grant summary judgment unless the evidentiary materials demonstrate that: (1) no genuine issue as to any material fact

⁸ Ohio Civ. R. 56(A).

remains to be litigated; (2) after the evidence is construed most strongly in the nonmoving party's favor, reasonable minds can come to but one conclusion and that conclusion is adverse to the nonmoving party; and (3) the moving party is entitled to judgment as a matter of law.⁹ Even when a summary judgment motion is unopposed, the movant must still meet his evidentiary burden under Civil Rule 56 of showing the absence of disputed material facts and that he is entitled to judgment as a matter of law.¹⁰

2. The Respondent alleges that the Petitioner is a vexatious litigator and requests that this Court find him to be the same. The Respondent has presented a list of thirty-two civil law suits instigated by the Petitioner in this case commencing in 2004. Four of the cited lawsuits were within this Court.¹¹ Two of these prior lawsuits involved public records requests which were dismissed for reasons similar to the reasons this Court found in dismissing the Petitioner's current petition. The Respondent cites seven civil right violation lawsuits that the Petitioner filed in Federal Court, nineteen lawsuits in the Court of Claims, one civil rights lawsuit filed in Belmont County Court of Common Pleas, and one petitioner for a Writ of Habeas Corpus in the Ohio Supreme Court. Respondent has included the complaints, court documents and the judgment entries from these cases with her Motion for Summary Judgment. The Petitioner admitted to filing

⁹ *Brown v. Balnius*, 5th Dist. Richland No. 08 CA 47, 2009-Ohio-2671, ¶ 15-16.

¹⁰ *Id.* at ¶ 18.

¹¹ The Petitioner actually has five prior lawsuits in this Court. The Respondent failed to include 2004-CV-304, which was filed on March 22, 2004 and dismissed on May 19, 2004.

fourteen civil cases in the past five years in his amended affidavit in this case.

3. In order to declare a person a vexatious litigator a court must find that a person “engaged in vexatious conduct in a civil action or actions, whether in the court of claims or in a court of appeals, a court of common pleas, municipal court or county court” and in order to bring a vexatious litigator action, a person had to have “defended against habitual and persistent vexatious conduct in the court of claims or in a court of common pleas, municipal court or county court.”¹² That language does not include lawsuits or vexatious conduct in federal courts or in the Ohio Supreme Court. This still leaves this Court with twenty-five cases filed by the Petitioner in the common pleas courts or court of claims within the State of Ohio to consider.
4. A Vexatious Litigator includes “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.”¹³ Out of these twenty-five cases instigated by the Petitioner, only one ended with a settlement. All of

¹² R.C. § 2323.52(A)(3) & (B).

¹³ R.C. § 2323.52(A)(3).

the other cases were dismissed. Most were dismissed for failure to state a claim, for jurisdictional issues, or for failure to correctly file.

5. Any person who has defended against habitual and persistent vexatious conduct “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.”¹⁴ All of the Petitioner’s actions have been against the Ohio Department of Corrections, which has been forced to continuously defend against the Petitioner’s claims and has filed the instant counterclaim.
6. An action to have a person declared a vexatious litigator may be commenced 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.¹⁵ Besides the current civil action, the Petitioner had filed three civil actions in the Court of Claims in 2014, all of which were dismissed for lack of jurisdiction of the court to consider the Petitioner’s claims regarding the conditions of his confinement. Therefore, the Respondent’s counter-claim has been timely filed.
7. A civil action to have a person determined to be a vexatious litigator is a separate civil action and shall proceed as any other civil action.¹⁶ As the current petition was not dismissed on the merits, the Court is not making

¹⁴ R.C. § 2323.52(B).

¹⁵ *Id.*

¹⁶ R.C. § 2323.52(C).

any determination based on the current case but based on the Petitioner's history of civil litigation.

8. Vexatious conduct includes conduct that serves merely to harass or maliciously injure another party to a civil action, 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 the conduct is imposed solely for delay.¹⁷
9. In upholding the constitutionality of the vexatious litigator statute, the Supreme Court laid out what to consider when making a determination that a person is a vexatious litigator.

The 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.¹⁸

In addition, 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.¹⁹

¹⁷ R.C. § 2323.52(A)(2).

¹⁸ *Mayer v. Bristow*, 91 Ohio St.3d 3, 13 citing *Central State Transit Auth. v. Timson*, 132 Ohio App. 3d 41, 50, 724 N.E.2d 458 (10th Dist.1998)

¹⁹ *Id.* (internal citations removed).

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.²⁰

10. A finding of vexatious conduct is not dependent upon whether Mr. Griffin intended his conduct to be harassing. The Court does not look to his subjective aim but instead examines the effect of his lawsuits upon the opposing parties and the judicial system. Mr. Griffith cannot be labeled a vexatious litigator simply for being a prolific filer of lawsuits, but the *Mayer* case does characterize vexatious litigators as 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.”²¹ (Emphasis added).

11. The Petitioner does not dispute that he has filed fourteen lawsuits within just the last five years. He has not prevailed in any of those cases. His lawsuits have been filed against state agencies, public officials and employees – almost exclusively against the Ohio Dept. of Corrections and/or its employees. Public funds must be expended to litigate their defense(s). The Petitioner begins the process by filing numerous grievances then proceeds through the administrative process until he files his lawsuits regarding the use of sugar substitutes in the prison cafeteria,

²⁰ *Id.*

²¹ *Id.*

the presence of birds in the cafeteria, the charge of a dollar a month for electric use, the restriction of the use of typewriters and copiers, the denial of reasonable access to legal materials, etc.²² The conclusion of the Franklin County *Watley* case is directly applicable here.²³

The undisputed evidence in the record establishes that every perceived slight results in a lawsuit and that this endless litigation is defendant's form of entertainment. His habitual and persistent filings have had the effect of harassing ODRC and its employees and constitute vexatious conduct under R.C. 2323.52A)(2)(a).

12. The court finds that, based upon clear and convincing evidence, the Petitioner, Mark Griffin, has engaged in vexatious conduct as defined by R. C. 2323.52(A)(2)(a) and therefore he is a vexatious litigator under R.C. 2323.52(A)(3). Accordingly, Respondent's counterclaim for summary judgment is well taken and granted with costs to Petitioner, Mark Griffin.
13. The Respondent requested attorney fees, court costs and expenses in this action under R.C. § 2323.51, alleging that the Petitioner engaged in frivolous conduct in the current action. That request is denied. The Petitioner's petition was dismissed for failure to comply with the applicable filing statutes. This Court has not reached the merits of the Petitioner's claim to determine whether or not this action was frivolous and there is not enough information in the record for the Court to make that determination. The finding that the Petitioner is a vexatious litigator is based on his previous filings and not on the instant case.

²² It is clear on several of the Informal Complaint Resolution forms attached to the Petitioner's various civil actions, that the Petitioner continuously uses the threat of civil suit to attempt to intimidate or threaten ODRC staff.

²³ *Rogers AG v. Watley* (2008) case no. 07-CVH10-14469.

Judgment Entry

It is therefore ordered:

1. Respondent's motion for judgment on the pleadings is granted and the Petitioner's Writ of Mandamus is dismissed and all motions and arguments involving the original petition are denied as moot;
2. Respondent's Motion for Summary Judgment on Respondent's counterclaim is granted.
3. Respondent's claim for attorney fees, court costs and expenses is denied.
4. The Petitioner in this case is found to be a Vexatious Litigator.
5. Mr. Griffin, without first obtaining leave of this court, shall not institute any legal proceeding, nor make any application, other than an application to this Court for leave to proceed under division (F) of R.C. 2323.52, in the Ohio Court of Claims, or in any county court of common pleas, municipal court, or other county court of Ohio.
6. Mr. Griffin shall not, without first obtaining leave of this Court, continue in any legal proceeding that he has instituted in the Ohio Court of Claims or in any court of common pleas, municipal court, or other county court of Ohio prior to the date of the entry of this order.
7. Pursuant to R.C. 2323.54(E), this order shall remain in force indefinitely.
8. Pursuant to R.C. 2323.52(F), only this Court may grant Mr. Griffin leave for institution or continuance of, or making of an application in, legal proceedings in the Ohio Court of Claims, or in any court of common pleas, municipal court, or any county court in Ohio. This Court will only grant

such leave if it is satisfied that the proceedings or application are not an abuse of process of the court in question, and that there are reasonable legal grounds for the proceeding or application. If leave is granted, it will be in the form of a written order by this Court.

9. Pursuant to R.C. 2323.52(D)(3), only the relevant court of appeals may grant Mark Griffin leave to institute or continue an action in the relevant court of appeals.
10. Within 30 days of the filing of this judgment entry, Mark Griffin shall file his request, if any, for leave to continue the assertion of any pending claim he has in an Ohio Court of Common Pleas, municipal court, or county court in which he is a party.
11. Additionally, if Mr. Griffin requests this court to grant him leave to proceed as described in R.C. 2323.52(F), the period of time commencing with the filing with this 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 part of an applicable period of limitations within which the legal proceedings or application involved generally must be instituted or made.
12. Pursuant to R.C. 2323.52(G), no appeal by Mr. Griffin shall lie from a decision of this Court if this Court denies Mr. Griffin, under R.C. 2323.52(F), leave for the institution or continuance of, or the making of an application in, legal proceedings in the Ohio Court of Claims or in any court of common pleas, municipal court, or county court in Ohio.

13. Pursuant to R.C. 2323.52(H), the Richland County Common Pleas Clerk of Courts shall immediately send a certified copy of this order to the Ohio 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 clerks of all courts of common pleas, municipal courts, or any county courts in Ohio in refusing to accept pleadings or other papers submitted for filing by Mark Griffin if he has failed to obtain leave under R.C. 2323.52(F) to proceed.
14. Pursuant to R.C. 2323.52(I), whenever it appears by suggestion of parties or otherwise that Mr. Griffin has instituted, continued, or made an application in legal proceedings without obtaining leave to proceed from this court, the court in which legal proceedings are pending shall immediately dismiss the proceeding or application of Mark Griffin.
15. Costs are taxed to the plaintiff.



Judge Brent Robinson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Judgment Entry was served according to local rules and sent by regular U.S. Mail this _____ day of April, 2015 to the following:

Mark Griffin Sr.
Attorney Maureen Yuhas

Clerk of Courts