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LORAIN COUNTY

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COURT OF COMMON PLEAS
TOM ORLANDO

LORAIN COUNTY COURT OF COMMON PLEAS

LORAIN COUNTY, OHIO

TOM ORLANDO, Clerk

JOURNAL ENTRY

Mark A. Betleski, Judge

Date 3/23/20

Case No. 17CV192781

LORAIN COUNTY PROSECUTOR

Plaintiff

CHRIS A PYANOWSKI

Plaintiff's Attorney

(440)329-5779

VS

ERNEST G GUYTON JR

Defendant

PRO SE

Defendant's Attorney

The Plaintiff Lorain County Prosecutor's Motion for Summary Judgment, pursuant to Civ.R. 56(C), on its claim Defendant Ernest G. Guyton, Jr. should be declared a vexatious litigator pursuant to R.C. 2323.52, came before the Court for consideration. The Court has reviewed the Plaintiff's Motion and Brief along with the Defendant Ernest G. Guyton, Jr.'s Reply in Opposition.

To prevail on a motion for summary judgment pursuant to Civ.R. 56(C), a moving party must show 1) there is no genuine issue of material fact that remains to be litigated; 2) the moving party is entitled to judgment as a matter of law; and, 3) it appears from the evidence that reasonable minds can come to but one conclusion, and viewing the evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party. *Temple v. Wean United, Inc.*, 50 Ohio St. 2d 317, 307 (1977). Once the movant has met their burden, the burden shifts to the nonmoving party to show why a genuine issue of material fact exists and why summary judgment should not be granted. *Dresher v. Burt*, 75 Ohio St. 3d 280, 292 (1996). Summary judgment is a favored procedural device to terminate litigation and to avoid a formal trial where there is nothing to try. *Norris v Ohio Std. Oil Co.*, 70 Ohio St. 2d 1, 2-3 (1982).

R.C. 2323.52 (B) provides in pertinent part that . . . a prosecuting attorney who has defended against habitual and persistent vexatious conduct in a court of appeals and court of common pleas 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 litigation . . . The prosecuting attorney may commence the civil action while the civil action or actions in which the habitual and persistent vexatious conduct occurred are still pending within one year after the termination of the civil action or actions in which the habitual and persistent vexatious conduct occurred. In this case, the Court finds the Plaintiff timely filed its action within one year of the termination of the civil action.

R.C. 2323.52(A)(3) defines a vexatious litigator as any person who has habitually, persistently, and without reasonable grounds engages in vexatious conduct in a civil action, whether in a court of claims, 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 that serves to harass or maliciously injure another party in the civil action or conduct that is not warranted under existing law and cannot be supported by a good faith argument for an extension, modification or reversal of existing law. R.C. 2323 (A)(2)(a)(b)(c).

A litigant may be declared a vexatious litigator under R.C. 2323.52 when the evidence shows that the litigant habitually and without reasonable grounds engaged in vexatious conduct by filing multiple, identical actions against another party and the litigant's conduct serves merely to harass. *Easterling v. Union Sav. Bank*, 2013-Ohio-1068 2013 Ohio App. LEXIS 949 (Ohio Ct. App., Greene County 2013).

An inmate's post-conviction proceeding is considered a collateral civil attack on a criminal conviction and a prosecutor's complaint for designating the inmate as a vexatious litigator for such filing falls within the authority of R.C. 2323.52. *Watkins v. Perry*, 2017-Ohio-9347, 2017 Ohio App. LEXIS 5853 (Ohio Ct. App. Trumbull County 2017). It has further been held a trial court is not limited to considering the inmate's conduct in any particular proceeding as R.C. 2323.52 speaks in terms of civil action or actions, thus permitting the court to examine other actions that a person has participated in to determine if that person is a vexatious litigator. *Id.*

Turning to the facts in this case, Defendant Guyton has filed and refiled the same challenge to his conviction or other cases in support of these challenges ten times in a twelve month period immediately before the filing of this vexatious litigation complaint. On January 19, 2016, Defendant Guyton filed a complaint against the Plaintiff. That Complaint was assigned Case No. 16CV188491 by Lorain County Common Pleas Court and was dismissed on May 26, 2016 when the Court granted Plaintiff's Motion for Summary Judgment. The case was dismissed due to Ernest G. Guyton, Jr.'s failure to state a claim upon which relief can be granted. The Defendant appealed the dismissal of Case No. 16CV188491. This appeal was assigned Case No. 16CA010966 and was dismissed by the Ninth District Court of Appeals on October 17, 2016.

On December 7, 2016 Defendant Guyton filed another complaint against the Plaintiff. This Complaint was assigned Case No. 16CV191127 by Lorain County Common Pleas Court. That case was dismissed on January 20, 2017 when the Court granted Plaintiff's Motion for Summary Judgment. The Defendant appealed the dismissal. This appeal was assigned Case No. 17CA01195 by the Ninth District Court of Appeals and was dismissed by the Court on March 14, 2017.

In yet another matter, Defendant filed a complaint against Plaintiff on April 12, 2017. This Complaint was assigned Case No. 17CV192095 and was dismissed on June 8, 2017 when the Court granted Plaintiff's Motion for Summary Judgment. The Court, in Case No. 17CV192095, noted that the Complaints in Case Nos. 16CV188491, 16CV191127, and 17CV192095 were identical but for a slight change in the captions. The Defendant appealed the dismissal of Case No. 17CV192095. This appeal was assigned Case No. 17CA011163 by the Ninth District Court of Appeals and dismissed by the Court on July 28, 2017 due to Ernest Guyton, Jr.'s failure to comply with the mandatory requirements of R.C. §2969.25(C).

On June 22, 2017, the Defendant filed a complaint for a Writ of Procedendo against Lorain County Clerk of Courts, Tom Orlando. The Defendant voluntarily dismissed his writ on September 15, 2017. On July 25, 2017, the Defendant filed a complaint for a Writ of Mandamus which was dismissed by the Ninth District Court of Appeals on September 25, 2017, when it granted Plaintiff's Motion to Dismiss.

Finally, on July 25, 2017, in Ohio Supreme Court Case No. 2017-1016, the Defendant filed for a complaint for a Writ of Mandamus demanding that a new trial be ordered. This matter was dismissed on the Plaintiff's Motion to Dismiss.

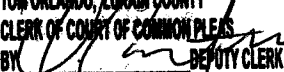
In a reply and affidavit filed by Defendant Guyton, he does not dispute the fact he filed all of the cases referenced by the Plaintiff. He cannot dispute the fact all of these cases were either dismissed or decided against him. Defendant Guyton has failed to meet his reciprocal burden under Civ.R. 56 and come forward with evidence to show that a genuine issue of material fact exists and why summary judgment should not be granted against him and he should not be declared a vexatious litigator under R.C. 2323.52. The Defendant's numerous, redundant and legally deficient lawsuits have caused the Plaintiff an inordinate amount of time and expense. R.C. 2323.52 was designed to address the situation such as the one at hand. It is patently unfair and unreasonable that any person should be continually forced to defend against, and the court system should be forced to handle the same unwarranted complaint that cannot be supported by any recognizable good-faith argument. See Hall v. Sawchyn, 145 Ohio App3d. 193 (2001).

Based upon the foregoing, the Court finds there are no genuine issues of material fact and the Plaintiff is entitled to judgment as a matter of law. The Plaintiff Lorain County Prosecutor's Motion for Summary Judgment that Defendant Ernest G. Guyton, Jr. be declared a vexatious litigator pursuant to R.C. 2323.52 is granted. This Court finds Defendant Ernest G. Guyton, Jr. to be a vexatious litigator.

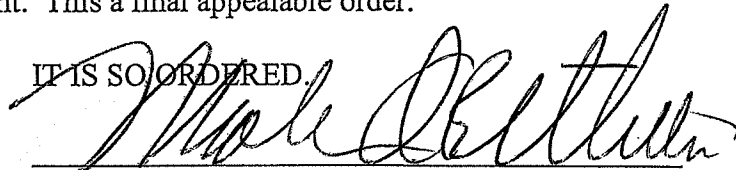
This Court hereby declares Defendant Ernest G. Guyton, Jr. to be a vexatious litigator. Pursuant to R.C. 2323.52(D)(1), this Court prohibits him from doing any of the following without first obtaining leave of this Court to proceed: (a) initiating legal proceedings in the court of claims or in a court 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 this Order; and (c) making any application, other than an application for leave to proceeds under decision (F)(1) of this section, in any legal proceeding instituted by the vexatious litigator or another person in any of the courts specified in division (D)(1)(a) of this section. Pursuant to R.C. 2323.52(E), this Order shall remain in force indefinitely. Finally, pursuant to 2323.52(H), this Court orders the Clerk of Courts to send a certified copy of this Order to the Supreme Court of Ohio for publication in a manner that the Supreme Court determines is appropriate.

Case closed. Costs to the Defendant. This a final appealable order.



I HEREBY CERTIFY THIS TO BE A TRUE COPY
OF THE ORIGINAL ON FILE IN THE OFFICE OF
TOM ORLANDO, LORAIN COUNTY
CLERK OF COURT OF COMMON PLEAS
BY  DEPUTY CLERK

IT IS SO ORDERED.


Judge Mark A. Betleski

cc: Pyanowski; Guyton

**TO THE CLERK: THIS IS A FINAL
APPEALABLE ORDER
PLEASE SERVE UPON ALL PARTIES NOT IN
DEFAULT FOR FAILURE TO APPEAR,
NOTICE OF THE JUDGMENT AND
ITS DATE OF ENTRY UPON THE JOURNAL.**