

ms.

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

PAUL J. GAINS)

CASE NO.: 99 CV 2351

PLAINTIFF)

JUDGE MARY CACIOPPO

vs.)

DONALD A. HARMON)

JUDGMENT ENTRY
AND OPINION

DEFENDANT)

CLERK OF COURTS
MAHONING COUNTY, OHIO
APR 09 2001
FILED
ANTHONY VIVO, CLERK

COPY

This cause is before the Court for consideration of Plaintiff's Motion for Summary Judgment as to the sole claim in the Complaint that Defendant be declared a "vexatious litigator." The Court has reviewed Plaintiff's Motion for Summary Judgment as well as Defendant's Contra Response to Plaintiff's Motion for Summary Judgment. For all of the following reasons, Plaintiff's Motion is sustained and the Court determines that Defendant is a "vexatious litigator."

Plaintiff is the Prosecutor of Mahoning County. Defendant is an inmate currently incarcerated at the Belmont Correctional Institution, St. Clairsville, Ohio.

On October 5, 1999, Plaintiff filed a Complaint to have Defendant adjudicated a vexatious litigator pursuant to R. C. §2323.52. On January 20, 2000, Plaintiff filed a Motion for Summary Judgment and on February 3, 2000, Defendant filed a Contra Response to Plaintiff's Motion for Summary Judgment.

On March 1, 2000, prior to ruling on Plaintiff's Motion for Summary Judgment, the Court ordered the case continued until such time as the Ohio Supreme Court ruled upon the constitutionality of R. C. §2323.52. The Supreme Court found R. C. §2323.52 constitutional in its entirety on December 29, 2000. See Mayer -v- Bristow (2000), 91 Ohio St. 3d 3.

The Court removed the previously issued stay and granted Plaintiff's Motion for Leave to File a Supplemental Motion for Summary Judgment on March 19, 2001. Defendant filed his Contra

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Response to Plaintiff's Motion for Summary Judgment on March 28, 2001.

Pursuant to Rule 56 of the Ohio Rules of Civil Procedure, summary judgment is properly granted when:

- (1) [n]o genuine issue as to any material fact 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 such evidence most strongly in favor of the party against whom the motion for summary judgment is made, that conclusion is adverse to that party.

See Welco Industries, Inc. -v- Applied Companies (1993), 67 Ohio St. 3d 344, 346.

It is well settled that the party seeking summary judgment bears the burden of showing that no genuine issue of material fact exists for trial. Mitseff -v- Wheeler (1988), 38 Ohio St. 3d 112, 115. However, the nonmoving party must produce evidence on any issue for which he or she bears the burden of production at trial. Wing -v- Anchor Media, Ltd. of Texas (1991), 59 Ohio St. 3d 108, 111. In accordance with Civ. R. 56(E), a nonmovant may not rest upon the mere allegations or denials of his pleading, but must set forth specific facts showing there is a genuine issue for trial. Chaney -v- Clark Cty. Agricultural Soc. Inc. (1993), 90 Ohio App. 3d 421, 424.

In his Motion for Summary Judgment, Plaintiff has identified seven (7) cases filed by the Defendant as a basis for his claim that Defendant is a vexatious litigator. Pursuant to the statutory language contained in R. C. §2323.52, this Court is limited in its consideration to cases that were filed after March 18, 1997, the effective date of the statute. Similarly, based upon the language contained in R. C. §2323.52(A)(3), this Court may only consider cases filed by Defendant in the Court of Claims, Court of Common Pleas, Municipal Court, or County Courts in the State of Ohio. Upon review, it is clear that all of the seven (7) cases identified by the Plaintiff were filed in the Mahoning County Common Pleas Court and were filed after March 18, 1997. Accordingly, all seven (7) may be examined in order to determine whether the Defendant should be declared a vexatious litigator.

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R. C. §2323.52(A) provides in pertinent part as follows:

(2) "Vexatious conduct" means conduct of a party in a civil action that satisfies any of the following:

(a) The conduct obviously serves merely to harass or maliciously injure another party to the civil action.

(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.

Upon review of the seven (7) cases cited by the Plaintiff, this Court finds that there exists no issue of material fact remaining to be litigated as to whether Defendant engaged in conduct defined as "vexatious" in R. C. §2323.52(A)(2). In particular, the Court finds that in all seven (7) of the cases Defendant engaged in conduct not warranted under existing law and was not supported by a good faith argument for an extension, modification, or reversal of existing law. Moreover, the Court finds that after reviewing Exhibits 14, 15 and 16, Harmon engaged in conduct in Case No. 98 CV 2081 that was obviously meant to harass or maliciously injure another party to that action.

It is clear that the Defendant fits the definition of a vexatious litigator under the statute and that Defendant's vexatious conduct is sufficiently demonstrated by the seven (7) cases identified by the Plaintiff. Defendant offers no basis in law to distinguish his conduct from that defined in R. C. §2323.52, nor does an independent review of the record in this matter allow this Court to ascertain any distinction. There exists no other means to prevent the patent abuse of the court system evidenced by the Defendant other than to declare him a vexatious litigator and impose the appropriate limitations on his vexatious conduct.

The Court therefore finds that Defendant is determined to be a "vexatious litigator" as defined in R. C. §2323.52, and that he is subject to the sanctions and prohibitions set forth therein.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that:

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1. Defendant, Donald A. Harmon aka Don Harman aka Donald A. Harman aka Donald Harman ("Defendant") is hereby declared a "vexatious litigator" as defined in R. C. §2323.52(A)(3).

2. Defendant is prohibited from doing the following without first obtaining leave of that court to proceed:

(a) Instituting legal proceedings in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court.

(b) Continuing any legal proceeding that Defendant has 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.

(c) Making any application other than an application for leave to proceed under Division (F) of R. C. §2323.52, in any legal proceedings instituted by the Defendant or another person in the Court of Claims or in a Court of Common Pleas, Municipal Court, or County Court.

3. This Order shall remain in force indefinitely.

4. The Clerk of the Mahoning County Common Pleas Court is hereby ordered to send a certified copy of this Entry to the Ohio Supreme Court for publication in a manner that the Supreme Court determines is appropriate pursuant to R. C. §2323.52(H).

IT IS SO ORDERED.

DATE: 4-9-01

Mary Cacioppo
JUDGE MARY CACIOPPO

April 10, 2001
This is a true copy of the original JS
Filed in Case No. 99cv2351
By P. Maguire ANTHONY VIVO, Clerk of Court Deputy Clerk

Done
THE CLERK SHALL SERVE NOTICE OF THIS ORDER UPON ALL PARTIES WITHIN THREE(3) DAYS PER CIVILR.5.

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