

COMMON PLEAS COURT
WARREN COUNTY OHIO
FILED

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IN THE COURT OF COMMON PLEAS
STATE OF OHIO, COUNTY OF WARREN
GENERAL DIVISION

DONNETTE FISHER, : **CASE NO. 11 CV 80863**
Plaintiff, : **JUDGE ODA**
v. : **DECISION AND ORDER**
ROBERT HARSH, : **GRANTING THE MOTION**
Defendant. : **FOR DEFAULT**

Pending before the court are the following motions: the motion for default judgment filed by the plaintiff on April 9, 2012 the plaintiff filed a renewed motion for sanctions on April 15, 2013 the Defendant has also filed a "Motion Leave of Court to Accept Previously Filed Answers to Complaint filed on: April 8, 2013, May 3, 2013, Excusable Neglect was Shown by Unrebutted Affidavit of Robert Harsh who did file a Notice of Appeal of the Court's March 19, 2012 on March 22, 2012. Judicial Notice Civ.R. 44.1 I was not served the Order's of this Court...." and also "Defendant's Memorandum and Affidavit Contra Plaintiffs Motion To Deny the Defendant Leave to Answer Complaint Pursuant to Excusable Neglect Civ R, 6(b)(2)...Pursuant to Civil Rules of Court; Civ.R, 52, &53 (D)(3)(a)(ii) Facts & Findings With Conclusion of Law Request" Judge Oda has no jurisdiction over this case, what happened to Judge Bronson?". Each motion will be addressed.

A short summary of the procedural matters of this case are as follows:

Robert Harsh was served a copy of the complaint by certified mail on November 9, 2011. The defendant filed a motion for an extension of time to answer and file counterclaims requesting an additional sixty to ninety days to file his answer, prior to the court's ruling on that motion, the defendant also filed a motion "to hold the case in abeyance manifest denial of physical liberty and any moron could determine...

Civ.R.44.1 Judicial Notice of False Imprisonment...Robert Harsh vs. O.D.R.C. Case No. 2011-12722....Appoint Qualified Counsel, Defendant Under Psychiatric Doctors Care” (“Motion to hold in abeyance”). The motion to hold in abeyance was denied in the March 19, 2012 entry which also gave the defendant until April 3, 2012 to file an answer. No answer was filed.

The motion for default judgment was filed on April 9, 2012. The defendant filed an “Answer” on April 8, 2013 and again refiled the same on May 3, 2013. A hearing on the motion for default judgment was scheduled for April 23, 2013. However, the defendant filed an appeal and therefore, that hearing was vacated. The appeal was subsequently dismissed on April 10, 2013 and the default hearing was rescheduled for May 16, 2013. Prior to the default hearing the Court in its May 15, 2013 decision ordered the two answers of the defendant be stricken from the record as a result of the defendant’s failure to establish or even allege excusable neglect as a reason for the untimely filing of his answer.

The answer at issue in this motion was filed more than a year after the deadline imposed by the court’s March 19, 2012 order. During that time, the defendant filed multiple documents including additional motions to strike and notices of jury trial, and a notice of removal to federal court. However, until April 8, 2013, more than a year after the expiration of time granted by Judge Bronson in that March 19, 2012 entry, there had been no answer to the complaint filed. In the May 24, 2013 motion for leave, it appears the defendant is alleging there is excusable neglect as a result of his appeal from March 2012 and an alleged failure of the clerk to properly file his notice of appeal. However, the defendant’s appeal from March 2012 was dismissed June 13, 2012, almost ten months before the defendant filed his answer. The defendant has not provided any reason for not answering the complaint nor has he alleged that his failure to respond was the result of excusable neglect. Instead the documents filed by the defendant refer to conspiracies and mistakes by the clerk that he alleges caused his failure to answer.

"In determining whether neglect is excusable or inexcusable, all the surrounding facts and circumstances must be taken into consideration. *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 514 N.E.2d 1122, syllabus. Neglect under Civ.R. 6(B)(2) has been described as conduct that falls substantially below what is reasonable under the circumstances. *State ex rel. Weiss v. Indus. Comm.* (1992), 65 Ohio St.3d 470, 473, 605 N.E.2d 37, 39, citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 152, 1 O.O.3d 86, 89, 351 N.E.2d 113, 117." *Davis v. Immediate Med. Servs., Inc.*, 80 Ohio St. 3d 10, 14, 684 N.E.2d 292, 296 (1997).

In the *Davis* case, the Court held that a party's failure to answer for more than thirteen months did not constitute excusable neglect. In the present case, the answer was filed more than a year after the Court ordered it be filed, even though the Court granted an extension of time to file. The answer was filed more than ten months after the appeal the defendant continuously refers to was dismissed and the defendant has failed to provide this court with any reason for his failure to file his answer prior to April of 2013. Therefore the defendant's motions: "Motion Leave of Court to Accept Previously Filed Answers to Complaint filed on: April 8, 2013, May 3, 2013, Excusable Neglect was Shown by Unrebutted Affidavit of Robert Harsh who did file a Notice of Appeal of the Court's March 19, 2012 on March 22, 2012. Judicial Notice Civ.R. 44.1 I was not served the Order's of this Court....." and also "Defendant's Memorandum and Affidavit Contra Plaintiffs Motion To Deny the Defendant Leave to Answer Complaint Pursuant to Excusable Neglect Civ R, 6(b)(2)...Pursuant to Civil Rules of Court; Civ.R, 52, &53 (D)(3)(a)(ii) Facts & Findings With Conclusion of Law Request" Judge Oda has no jurisdiction over this case, what happened to Judge Bronson?" are DENIED.

There was a default hearing in this matter on May 16, 2013, pursuant to Civ.R. 55 which governs default judgments. In this case, the Court granted the defendant more time than requested in the motion for additional time to answer and the defendant still failed to file an answer for the year following that deadline. The defendant has now attempted to file two answers without alleging they were untimely as a result of excusable neglect. Pursuant to Civ.R. 6, the answers have

been made official with unconditional release common sense should dictate when a federal judge says your unlawfully restrained of your liberty relief is on the way especially when you were falsely imprisoned on a misdemeanor. I will be sueing (*sic*) all government officials who violate their oaths of office also all countys (*sic*) and county commissioners all who deny me adequate remedy of law." (See Plaintiff's Exhibit 3 submitted at the default hearing which is a copy of a motion to strike filed in Montgomery County Court case 2010CV06125).

"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." *Mayer v. Bristow*, 2000-Ohio-109, 91 Ohio St. 3d 3, 13, 740 N.E.2d 656, 665 (2000).

In this case, there was evidence presented at the default hearing establishing the defendant continues to file meritless lawsuits purely to engage certain government employees in unnecessary and time consuming lawsuits. The pleadings in this case and in the other cases submitted to the court show the defendant's constant verbal assaults and accusations aimed at the court and other officials in these matters. Therefore, the plaintiff is entitled to the relief requested in her complaint.

Therefore, the defendant is prohibited from doing one or more of the following without first obtaining the leave of that court to proceed:

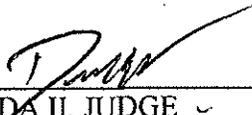
- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court;

(b) Continuing any legal 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.

The plaintiff also has a renewed motion for sanctions pending. In light of the court's ruling in this matter, the motion for sanctions will be denied.

IT IS SO ORDERED.



DONALD E. ODA II, JUDGE

c: Robert Harsh, pro se
Jamey Pregon, Esq.

CERTIFIED COPY
JAMES L. SPAETH, CLERK
WARREN COUNTY, OHIO
COMMON PLEAS COURT
BY Jan K. Bilgore
CLERK