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IN THE COURT OF COMMON PLEAS
FOR LICKING COUNTY

2011 MAR -4 P 4: 02

FILED

| | | |
|--|---|------------------------------|
| JAMES HELFRICH |) | CASE NO. 07-CV- 394 |
| |) | |
| Plaintiff and Counterclaim Defendant |) | JUDGE RICHARD M. MARKUS |
| |) | (Serving by Assignment) |
| vs. |) | |
| |) | FINAL JUDGMENT ON THE |
| TIMOTHY G. MADISON, et al. |) | DEFENDANTS' COUNTERCLAIM, |
| |) | DECLARING THAT THE PLAINTIFF |
| Defendants and Counterclaim Plaintiffs |) | IS A VEXATIOUS LITIGATOR |

This matter came before the court in a separate trial for the defendants' counterclaim which asserts that the plaintiff is a "vexatious litigator" as defined by R.C 2323.52(A)(3). From all the evidence and with contemporaneous Findings and Conclusions, this court finds for the Counterclaim Plaintiffs and against the Counterclaim Defendant.

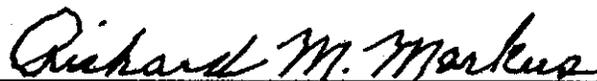
This court declares that James Helfrich, who currently resides in Pataskala, Ohio, is is a vexatious litigator. He must comply with the provisions of R.C. 2323.52(F) if he proposes to file or continue to assert any civil case without duly authorized legal counsel in the Ohio Court of Claims, or any Ohio County Court, Municipal Court, or Common Pleas Court. He shall not make any application other than an application to proceed for any case he has filed without duly authorized legal counsel in the Ohio Court of Claims, or any Ohio County Court, Municipal Court, or Common Pleas Court.

Pursuant to R.C. 2323.52(F), this court shall not grant him leave to file or continue any civil case without duly authorized legal counsel unless he satisfies this court that the proceedings or application are not an abuse of process of the court in question and that there are reasonable grounds for that proceeding or application.

Pursuant to R.C. 2323.52(H), the Clerk of this Court shall send a certified copy of this order and judgment to the Clerk of the Ohio Supreme Court for publication in a manner that the Supreme Court has determined is appropriate to facilitate the refusal by applicable court clerks to accept pleadings or other papers submitted by or on behalf of James Helfrich without duly authorized legal counsel and without first obtaining leave from this court to file that pleading or other paper.

This court retains jurisdiction over the plaintiff's separate claim and any determination whether the defendants in this case may recover any attorney fees or expenses as Defendants pursuant to R.C. 2323.51 are as Counterclaim Plaintiffs pursuant to R.C. 2323.52.

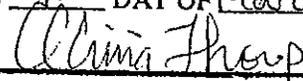
THIS IS A FINAL JUDGMENT ON THE SEPARATE COUNTERCLAIM
AND A FINAL APPEALABLE ORDER PURSUANT TO
HELFRICH V. MADISON, 2009-OHIO-5140 (SEPT. 28, 2009)



Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Licking County Common Pleas Court for this matter

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THIS JUDGMENT AND ORDER TO THE PLAINTIFF, DEFENDANTS' COUNSEL, THE ASSIGNED VISITING JUDGE, AND THE CLERK OF THE OHIO SUPREME COURT

IN COMPLIANCE WITH CIVIL RULE 58,
IT IS VERIFIED THAT COPIES HAVE BEEN
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Deputy *Alma Sharp* IN THE COURT OF COMMON PLEAS
Gary R. Walters FOR LICKING COUNTY

2011 MAR -4 P 4: 03

FILED

Clerk of Courts

JAMES HELFRICH,

Plaintiff and Counterclaim Defendant

vs.

TIMOTHY G. MADISON, et al.,

Defendants and Counterclaim Plaintiffs

) CASE NO. 07-CV- 394
)
) JUDGE RICHARD M. MARKUS
) (Serving by Assignment)
)
) FINDINGS AND CONCLUSIONS
) FOR CONTEMPORANEOUS
) JUDGEMENT ON DEFENDANTS'
) COUNTERCLAIM

PROCEDURAL HISTORY

On March 16, 2007, Mr. Helfrich filed this case against Timothy Madison, Madison & Rosan, LLP, Carol Strickland, David Garner, and N.R.T. Columbus Inc. d.b.a. Coldwell Banker King Thompson Realty. His Complaint asserts claims for "tortious interference with a business relationship, and abuse of process and fraud." On April 13, 2007, the defendants filed a motion to dismiss the complaint or for summary judgement, together with a counterclaim to declare that Mr. Helfrich is a vexatious litigator pursuant to R.C. 2323.52. On April 20, 2007, the defendants filed a summary judgment motion for their counterclaim, which they supported with multiple documents.

On November 25, 2008, the originally assigned judge granted the defendants' summary judgment motion and ruled that Mr. Helfrich is a vexatious litigator. On appeal from that ruling, the Fifth District Court of Appeals vacated that summary judgment and remanded the case for further proceedings because the defendants failed to authenticate their supporting documents sufficiently to satisfy Civ. R. 56(E). *Helfrich v. Madison*, 2009-Ohio-5140 (Sept. 28, 2009).

On remand, on October 20, 2009, the defendants refiled their summary judgment motion

for their vexatious litigator counterclaim, which they again supported with numerous documents. Effective December 24, 2009, after the original judge recused himself, the Chief Justice assigned this visiting judge to conduct all further proceedings. On April 6, 2010, this judge filed an Order for Pending Motions which stayed proceedings for Mr. Helfrich's claims while the court proceeded to consider and decide the defendants' counterclaim. After permitting reasonable discovery for the defendants' vexatious litigator counterclaim, this judge denied cross motions for summary judgment on that claim. After responding to multiple pretrial motions for that separate claim, this judge conducted a bench trial hearing for that counterclaim.

From November 18, 2010, through November 23, 2010, this court conducted but did not conclude the bench trial for the defendants' counterclaim. The unavailability of court facilities, Mr. Helfrich's scheduled surgeries, and other circumstances required the court to recess the trial. On January 5, 2011, the court resumed that trial. The parties completed their presentation of evidence and oral arguments for the counterclaim on January 7, 2011.

The court then directed the parties to file proposed findings of facts and conclusions of law no later than February 21, 2011. Both sides filed proposed findings and conclusions on February 18, 2011. Having reviewed their proposals, the record of this case,¹ a short excerpt from trial testimony transcribed at Mr. Helfrich's request, this judge's trial notes, and the trial exhibits, this judge provides the following findings and conclusions for his contemporaneous final judgment on the vexatious litigator counterclaim.

¹ In a written order he filed on November 30, 2010, this judge complied with Evid. R. 201 by notifying the parties that he would take judicial notice of the entire record in this case. He further explained on the trial record that he would not consider inadmissible hearsay allegations in any documents as proof of facts they allege.

THE VEXATIOUS LITIGATOR CLAIMS

R.C. 2323.52(A)(3) defines a “vexatious litigator:”

"Vexatious litigator" means 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. "Vexatious litigator" does not include a person who is authorized to practice law in the courts of this state under the Ohio Supreme Court Rules for the Government of the Bar of Ohio unless that person is representing or has represented self pro se in the civil action or actions.

R.C. 2323.52 (A)(2) defines “vexatious conduct:”

(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.

R.C. 2323.52(A)(1) provides that “Conduct” for this purpose has the same meaning as R.C.

2323.51(A)(1)(a) defines that term:

(1) "Conduct" means any of the following:

(a) The filing of a civil action, the assertion of a claim, defense, or other position in connection with a civil action, the filing of a pleading, motion, or other paper in a civil action, including, but not limited to, a motion or paper filed for discovery purposes, or the taking of any other action in connection with a civil action;

The defendants assert that Mr. Helfrich “habitually, persistently, and without reasonable grounds engaged in vexatious conduct in connection with the following civil litigation:

- A. Helfrich v. Strickland, Garner, and N.R.T. Columbus, Inc., d.b.a. Coldwell Banker King Thompson, Licking County Municipal Court Case No. 04-CVF-00225 (hereafter “Strickland Municipal Court Case”);
- B. Helfrich v. Strickland, Garner, and N.R.T. Columbus, Inc., d.b.a. Coldwell Banker King Thompson, Licking County Common Pleas Case No. 05-CV-0120 (hereafter “Strickland Common Pleas Case”);
- C. Helfrich v. Madison, Madison & Rosan, Strickland, Garner, and N.R.T. Columbus, Inc., d.b.a. Coldwell Banker King Thompson, Licking County Common Pleas Case No. 07-CV-0394.[hereafter “the present case”];
- D. Helfrich v. Mellon, Licking County Municipal Court Case No. 03-CVG-01721 (hereafter “Mellon Municipal Court Case”);
- E. Helfrich v. Mellon, Licking County Common Pleas Court Case No. 03-CV-1102 (hereafter “Mellon Common Pleas Court Case”)
- F. Helfrich v. Cheplowitz, Licking County Common Pleas Case No. 05-CV-0891;
- G. Helfrich v. Allstate Insurance Company, Licking County Common Pleas Case No. 08-CV-187;
- H. Helfrich v. Allstate Insurance Company, Lane, Alton & Horst, and Rick Marsh, Licking County Common Pleas Case No. 09=CV-1379;
- I. Helfrich v. W. David Branstool, Gina Smith, City of Newark, and Licking County, Licking County Common Pleas Case No. 08-CV-0050;
- J. Helfrich v. Marcelain, Licking County Common Pleas Case No., 08-MD-10;
- K.. Helfrich v. Sheila Farmer, John Wise, and Julie Edwards, Licking County Common Pleas Case No. 09-MD-17
- L. Thirty-eight other civil cases that Mr. Helfrich filed in the preceding ten years in the Licking County Municipal Court, the Licking County Common Pleas Court, the Franklin County Municipal Court, the Franklin County Common Pleas Court, the Fifth District Court of Appeals, and the United States District Court for the Southern District of Ohio, which the defendants list as Exhibit J to their Counterclaim or submit in their exhibits, including the following eighteen:
 - 1. Helfrich v. City of Pataskala Planning and Zoning, Licking County Common Pleas Case No. 98-CV-00375;

2. Helfrich v. City of Pataskala Planning and Zoning, Licking County Common Pleas Case No. 99-CV-00082;
3. Helfrich v. City of Pataskala Planning and Zoning Commission Members and City of Pataskala, Licking County Common Pleas Case No. 99-CV-00083;
4. Helfrich v. City of Pataskala Planning and Zoning Licking County Common Pleas Case No. 00-CV-0843;
5. Helfrich v. City of Pataskala Board of Zoning Appeals, Licking County Common Pleas Case No. 05-CV-0018;
6. Helfrich v. Direct TV, Licking County Municipal Court Case No. 06-CVI-2905;
7. Helfrich v. D & J Master Clean, Inc., Licking County Common Pleas Court Case No. 98-CV-00683;
8. Helfrich v. D & J Master Clean, Inc., Licking County Common Pleas Case No. 99-CV-00666;
9. Helfrich v. Ohio Unemployment Compensation Board of Review, Licking County Common Pleas Case No. 97-CV-00048;
10. Helfrich v. Sears Roebuck Company, Licking County Municipal Court Case No. 03-CVI-3353;
11. Helfrich v. Metal Container Corporation, Franklin County Common Pleas Case No. 95-CV-08292;
12. Helfrich v. Metal Container Corporation, Franklin County Common Pleas Case No. 98-CV-03539;
13. Helfrich v. Metal Container Corporation, Franklin County Common Pleas Case No. 00-CV-009433;
14. Helfrich v. Metal Container Corporation, Franklin County Common Pleas Case No. 01-CV-012273;
15. Helfrich v. Metal Container Corporation, Licking County Common Pleas Case No. 96-CV-00478;

16. Helfrich v. Metal Container Corporation, Licking County Common Pleas Case No. 97-CV-00048;
17. Helfrich v. Metal Container Corporation, Fifth District Court of Appeals Case No. 1997 CA 00049;
18. Helfrich v. Metal Container Corporation, Fifth District Court of Appeals Case No. 2000 CA 00591.

VEXATIOUS CONDUCT FINDINGS FOR THE STRICKLAND CASES

1. Mr. Helfrich was a *pro se* plaintiff and the counterclaim plaintiffs were defendants and/or defendants' counsel in the Strickland Municipal Court case, the Strickland Common Pleas Court Case, and the present case.

2. On February 9, 2004, Mr. Helfrich filed the Mellon Municipal Court Case, in which he claimed \$5,000 compensatory damages from two real estate agents who allegedly misrepresented the condition of residence property he purchased for investment purposes.

3. One month later, on March 10, 2004, Mr. Helfrich added the agents' broker as a defendant in that case and increased his compensatory damage claim from \$5,000 to \$7,000.

4. On July 7, 2004, the magistrate in that case ordered Mr. Helfrich to produce copies of recordings he covertly made for his telephone conversations with adverse parties.² Two days later on July 9, 2004, Mr. Helfrich voluntarily dismissed that case without complying with that order.

5. Approximately seven months later on January 27, 2005, he refiled the same claims against the same defendants in the Strickland Common Pleas Court case, where he increased his

² At the vexatious litigator trial, Mr. Helfrich stated that he frequently recorded telephone conversations and retained those recordings without advising the other party.

compensatory damage claim to \$27,000. Though he now asserts that he had a basis for those claims, he consistently failed to produce any records, receipts, or other documentary evidence to support any of those monetary claims in either court. This judge finds that he lacked any evidence then to support those monetary claims.

6. The trial court ultimately granted the defendants' summary judgment motion and dismissed the Strickland Common Pleas Court Case because Mr. Helfrich failed to provide any evidence to support his damage claim. The court of appeals affirmed that dismissal. Mr. Helfrich then filed repetitious and groundless motions in the appeals court for reconsideration and to supplement that motion, which included the following scandalous language [solid capitalization and bold face in original]:

THIS COURT'S OPINION OF SEPTEMBER 29, 2009, IN A CASE CAPTIONED 08-CA-150, IS DIRECT EVIDENCE OF THIS COURT'S DOUBLE STANDARD, PREJUDICE, VIOLATION OF CONSTITUTIONAL RIGHTS, OR RAISED AN ISSUE FOR CONSIDERATION THAT WAS NOT CONSIDERED AT ALL, OR WAS NOT FULLY CONSIDERED BY THIS COURT WHEN IT SHOULD HAVE BEEN.

7. In the Strickland Common Pleas Case, Mr. Helfrich filed documents which contained the following scurrilous, scandalous, or defamatory comments which unacceptably demeaned the adverse parties, their counsel, the legal profession, the judge, and the judiciary:

- a. This court should be cautioned that if it orders the Plaintiff to conduct himself as that of Defense Counsel, a member of the bar, they are giving him free reign to lie, mislead, and unethically twist facts.
- b. This court has been sitting around with baited breath, allowing this conduct to continue.
- c. This may be a hard pill to swallow, but the courts and attorneys lash out at self representation, and penalize it whenever they can for not following procedural

matters.

- d. Now we are waiting to see if this Court has a double standard.
- e. This court has turned a blind eye to plaintiff's discovery and allowed defense counsel repeated delays in discovery hindering plaintiff's trial. Defense counsel one of your legal compadras [sic] saw no fault in ordering the deposition to be taken in a nonparty's house.
- f. In reality Mr. Madison knows this court has cast a blind eye on justice and has turned to sending the plaintiff through a gauntlet of legal maneuvers hoping to have the case dismissed.
- g. Likewise it is unconscionable to assume the cartel would sanction one of its own.
- h. If Plaintiff was represented by the cartel, this court would simply grant Plaintiff's well-grounded Motion, and then only the supplemental complaint would move forward.
- i. Point being, that the Plaintiff pro se has insulted this system. He graduated high school without knowing how to read and write. Now he performs the same tasks as the attorney who demands nothing less than \$200 per hour. It is a slap in the face. If others are successful, your cartel will collapse.
- j. I assume they come to this conclusion because they are members of the bar. Why it may be a hard pill to swallow, our justice system has evolved into a self-serving system which is self-perpetuating – it demands \$200 plus an hour. In turn, the judges take care of the attorney's, and the attorney's take care of the judges, so there is no need to change a thing.
- k. As all Mr. Madison's Motions before this Court, they are not statements of fact, just false statements from a desperate person trying to justify his \$200 per hour job against a person with no legal training.
- l. This Court has bent over backwards to cross examine and disbelieve the Plaintiff at every possible avenue.
- m. What Magistrate Plunkett did was denied the Plaintiff his legal right to Supplement a complaint, and add Defendants to that action. It gets so frustrating to deal with your buddy system.
- n. However, the Plaintiff realizes that our legal system is none other than a self-perpetuating system of Judges helping attorney's, and attorney's helping Judges to

perpetuate the system, he realizes he cannot prevent the Trial Judge from just pencil whipping an answer, but Civil Rule 53 at least forces that hand.

- o. This is a prime example on how Defense counsel takes it upon himself to twist the facts and misinform this Court of Plunkett's reasoning of state of mind. However, before you read any further, needs to get in the state of mind set that it must abide by Rules of Civil Procedures, and pull itself back from the mindset that it must protect officers of the Court at all costs.
- p. It gets so frustrating to deal with your buddy system.
- q. This Court has bent over backwards to cross examine and disbelieve the Plaintiff at every possible avenue.
- r. In spite of this Court's blind eye to discovery, their attempts to support the buddy system, the Plaintiff has gained ground, and exhausted all of the Defendants' affirmative defenses.
- s. From the start, Defense counsel has only played on this courts ignorance to the law, and its hope that your good ole boy system would throw this action out with this gauntlet of legal maneuvers. This is just one more.
- t. I find it to be nothing but a slap in the face for Magistrate Plunkett to alter his January 10th Order, without allowing Plaintiff to even collect his out-of-pocket or travel costs. Plunkett further makes a mockery of the system when he only grants Plaintiff the cost of the court reporter, which undisputedly was already waived. Let us not be naïve, the record supports that ex-parte [sic] communications have taken place between the Defendant and the office of Magistrate Plunkett and Magistrate Hayes. Does anyone think that Plunkett did not grant the award of the court reporting fees knowing they were not already waived? Well, what a gift.
- u. Again Defense counsel takes advantage of this Court's refusal to act in the best regard for the judicial process. For this Court to repeatedly turn a blind eye to fraud and intentional deception, is an embarrassment to the system as a whole.
- v. Mr. Madison is not too far off from reality, the reality here of the issue is that the Plaintiff has had to jump through as many hoops as this Court can possibly put up, and he is capitalizing on it. He is just employing the tactics this Court has encouraged.

8. These comments may well constitute indirect or direct contempt. They obstruct, delay and distract proceedings. Mr. Helfrich mistakenly attempts to defend them as his exercise

of his right to free speech. They obviously serve “merely to harass or maliciously injure another party to the civil action.”

9. In the Strickland Common Pleas Case, Mr. Helfrich repeatedly and persistently filed documents that inappropriately delayed proceedings, including objections or responses to the court’s rulings, surreply arguments without leave, motions for reconsideration or clarification, and memoranda opposing requests that he did not oppose.

10. In a written message to adverse counsel in the Strickland Common Pleas Case, Mr. Helfrich threatened to “file perjury charges” against one of the defendants if the defendants did not agree within two days to accept his new, increased settlement demand for more than his alleged compensatory damages.

11. In an effort to obstruct the defendants’ inspection of the allegedly defective or damaged property in the Strickland Common Pleas Case, Mr. Helfrich assisted his tenant in preparing a document to resist that inspection.

12. When the magistrate directed Mr. Helfrich’s tenant to comply with a subpoena for a deposition in the subject property where she resided, Mr. Helfrich retaliated with a motion for the magistrate to supply the keys to the magistrate’s home for Mr. Helfrich to take depositions there on twelve hours notice.

VEXATIOUS CONDUCT FINDINGS FOR THE PRESENT CASE

13. Mr. Helfrich filed the present case on March 16, 2007. His Complaint asserts substantially the same claims against the same defendants that he sued in the Strickland Common Pleas Case, while adding claims against them and their legal counsel for allegedly improper conduct in that prior case.

14. Mr. Helfrich did not dismiss the Strickland Common Pleas Case. Both cases remained pending to assert substantially the same misrepresentation claims against the sales agents and the broker for sixteen months, until the trial court dismissed the Strickland Common Pleas Court Case on July 18, 2008.

15. In substance, Mr. Helfrich's present case adds a claim that the present defendants, including the sales agents and the broker in the prior case and their legal counsel, wrongfully pursued investigation or discovery efforts to confirm or deny Mr. Helfrich's damage claims in that prior case.

16. Mr. Helfrich characterizes his claims in the present case as tortious interference with his business relationship with his tenant, abuse of process, and fraud. If Mr. Helfrich had any right to recover from the sales agent or the broker for alleged misrepresentation, the pending and subsequent dismissal of the Strickland Common Pleas Case may bar those claims here. If Mr. Helfrich had any legally cognizable rights to complain about or obtain redress for the adverse parties' conduct in the Strickland Common Pleas Case, those rights arose from and were enforceable in the Strickland Common Pleas Case and may not be a proper subject for a separate action. Further, even if his present Complaint states a legally cognizable claim against the sales agents and the broker, his present Complaint may fail to state a legally cognizable claim against their lawyers for the lawyers' conduct on behalf of their clients.

17. Without deciding whether Mr. Helfrich's Complaint states a legally cognizable cause of action against some or all the named defendants, this judge finds from the evidence now available that Mr. Helfrich filed the present case (a) to retaliate against the present defendants for their defense of the Strickland cases and (b) to discourage their continued defense of the

Strickland Common Pleas Case by intimidation.

18. On the same day that Mr. Helfrich filed the present case and almost one month before the defendants filed their counterclaim, Mr. Helfrich filed a discovery request that the defendant lawyer and his law firm produce their federal tax returns for the preceding three years, together with “related schedules and all receipts used to prepare said returns.” Mr. Helfrich later argued that the court should require the lawyer and his firms to comply with that request.

19. In an attempt to justify that extraordinary discovery request, Mr. Helfrich disingenuously testified that he sought their tax returns to identify persons with whom they had dealings. This judge finds that Mr. Helfrich filed that discovery request and sought to enforce it (a) as retaliation for the same lawyer’s request in the Strickland Common Pleas Case and the magistrate’s resulting order that Mr. Helfrich disclose the limited part of his tax returns that could support or contradict his damage claim and (b) to discourage their continued defense of the Strickland Common Pleas Case by intimidation.

20. On the same day that Mr. Helfrich filed the present case, he filed a motion for the assigned judge to recuse himself for “personal conflicts between himself and the plaintiff.” The assigned judge for the present case was the same judge who had been presiding over the Strickland Common Pleas Case for more than two years without any request that he withdraw. Mr. Helfrich reasserted that request in filings six weeks later on April 20, 2007, and ten days thereafter on May 3, 2007, and in a letter to that judge on August 7, 2007.

21. When Mr. Helfrich failed to persuade the assigned judge to withdraw in the present case, he filed an Affidavit of Disqualification on August 24, 2007, which the Chief Justice denied eleven days later on September 4, 2007. Approximately one year later on August 21, 2008, Mr.

Helfrich filed a Renewed Affidavit of Disqualification, which the Chief Justice treated as a motion to reconsider the prior ruling and denied on August 26, 2008. On September 5, 2008, Mr. Helfrich filed a response to the Chief Justice's ruling, which the Chief Justice treated as a second motion for reconsideration and denied on September 8, 2008.

22. On October 21, 2008, Mr. Helfrich filed deposition subpoenas for the assigned judge's bailiff and secretary to support his continuing efforts to remove that judge. Following a hearing, the judge properly granted motions to quash those subpoenas. Despite that ruling, Mr. Helfrich subpoenaed judges and court personnel for the counterclaim trial. This judge granted motions to quash the subpoenas for two judges but permitted Mr. Helfrich to call one judge's court reporter and the other judge's secretary. Both of them gave testimony adverse to Mr. Helfrich's claims. This judge finds that Mr. Helfrich's attempts to subpoena the judges and court staff were part of his efforts to intimidate those judges and other judges who may preside over his cases, which these findings also discuss below.

23. On December 8, 2008 (thirteen days after the assigned judge declared that Mr. Helfrich is a vexatious litigator), Mr. Helfrich filed another Affidavit of Disqualification. The Chief Justice dismissed that disqualification request on December 13, 2008, because it failed to allege that there was any proceeding then pending before that judge. On December 15, 2008, Mr. Helfrich filed a Renewed Affidavit of Prejudice. On December 16, 2008, he filed a motion to reconsider the Chief Justice's dismissal of his December 8 Affidavit. On December 18, 2008, the Chief Justice denied both new requests in an extended entry that reviews the entire history of Mr. Helfrich's efforts to remove the assigned judge and concludes:

Finally, it is observed that Helfrich has filed six separate requests to disqualify

Judge Marcelain in the underlying action. The statutory right to seek disqualification of a judge is an extraordinary remedy not to be used in a frivolous manner. Helfrich is cautioned that the filing of any further frivolous, unsubstantiated, or repeated affidavits of disqualification may result in an imposition of sanctions.

24. This judge finds that Mr. Helfrich's persistent efforts to remove the assigned judge unnecessarily delayed, disrupted, and distracted proceedings in an attempt to intimidate that judge. Apparently his unrelenting attacks on that judge ultimately caused the judge to withdraw on December 15, 2009, with a resulting delay while the Chief Justice assigned this visiting judge and while this judge expended significant time to review and understand the voluminous record.

25. On July 24, 2008, Mr. Helfrich filed his Answer to the defendants' vexatious litigator counterclaim, in which he denied many allegations "for want of knowledge" when he knew they were true and unequivocally denied many other allegations that he later testified were true. His Answer asserted affirmative defenses that the counterclaim is barred by (a) waiver and estoppel, (b) laches, (c) "unclean hands," (d) failure to comply with Civ. R. 9 and 10, (e) "the defense of truth," (f) "the defense of privilege," (g) "the defense of freedom of speech," (h) limitations, and (i) failure to join parties. He made no attempt to support most of those defenses at the trial, and he evaded the court's questions during his summation at the end of the trial whether he continued to assert some of them. He responded that he had yet decided whether he could support them.

26. A review of the record in this case shows that Mr. Helfrich repeatedly filed unnecessary, redundant, cumulative, inappropriate, and/or unauthorized documents – all of which delayed and distracted proceedings and many of which imposed expense when adverse counsel reasonably felt an obligation to respond. As he had done in the Strickland cases, he filed

surreplies without leave. In one document he compared adverse counsel's conduct with the practices of Hitler and Saddam Hussein.

27. During the one month trial recess, Mr. Helfrich (a) filed unauthorized documents in an attempt to submit evidence outside the trial record,³ (b) filed a motion that requested this judge to act on his behalf by retrieving material from the Clerk's office, and (c) sent this judge and adverse counsel a fax message that he would retain a recording because he mistakenly perceived it would reflect unfavorably on the judge. In filed documents and at the counterclaim trial, he periodically referred to argument or testimony as lies and fraud when they were at most differing perceptions or opinions about events.

28. Mr. Helfrich demonstrated his disdain for court procedures by his demeanor during the vexatious litigator trial. He frequently argued with the judge about rulings and argued with witnesses rather than questioning them. He persisted in addressing issues after the judge ruled that they lacked relevance.

VEXATIOUS CONDUCT FINDINGS FOR OTHER ACTIONS OR PROCEEDINGS

29. When asked about his litigation history, Mr. Helfrich gave evasive testimony that he could not remember how many cases he had filed, he could not approximate that number, and he could not remember or approximate what portion of those cases involved tenant relations. His testimony caused the judge to infer and find that he recognized that he had filed an extraordinary number of cases.

30. Mr. Helfrich asserted that he prevailed in every case he filed, but he provided no details about the results of most of them. For at least one case, the adverse lawyer testified that

³ This judge filed a written order to strike those documents on January 5, 2011.

Mr. Helfrich's claims had no merit. For the Mellon Municipal Court Case (listed above at p. 4), Mr. Helfrich claimed that his tenant owed him at least \$6,300 damages, but the trial court's judgment awarded him only \$569.56, while awarding the tenant \$2,500 as damages and \$48,000 for attorney fees on her counterclaim. His subsequent post judgement motions and his appeal documents belie any claim that he prevailed.

31. Mr. Helfrich was the person with the greatest knowledge about his litigation history, and he knew that the counterclaim complained about that history. He ignored or denied that his lawsuits imposed stress and expense on adverse parties. His evasive testimony and his failure to provide more responsive information caused this judge to infer and find that he lost some cases, he obtained some judgements for considerably less than his claimed losses, and he obtained some settlement payments when adverse parties sought to avoid or limit stress and litigation expense.

32. On July 25, 2005, Mr. Helfrich Shortly after he received the adverse verdict in the Mellon Municipal Court Case, Mr. Helfrich filed suit against an opposing witness in that trial. He later filed suits against his liability insurer and the lawyers who that insurer retained to defend him against the tenant's counterclaim.

33. Approximately three years after the adverse Mellon Municipal Court verdict, Mr. Helfrich sued the trial court judge, his court reporter, the City of Newark, and Licking County – alleging their misconduct in the Mellon case. This judge finds that Mr. Helfrich's lawsuits against those Mellon case participants were unsupportable and retaliatory. He disregarded common law and statutory immunity provisions in his attempt to punish those defendants for adverse results he sustained.

34. During the period that the prior judge's vexatious litigator order remained in effect,

Mr. Helfrich applied for leave to file separate *pro se* lawsuits against (a) that judge, and (b) the three appeals court judges who affirmed the dismissal of the Strickland Common Pleas Case. Those proposed cases claimed that the judges wrongfully performed their judicial duties in Mr. Helfrich's cases. The assigned judge properly declined to grant leave for those unsupportable cases which ignored very well established judicial immunity principles. Mr. Helfrich's attempts to file those cases further demonstrated his urge to retaliate against those who offend him, regardless of the merits of his claims, and to intimidate judges who then preside or may soon preside over his cases.

35. Mr. Helfrich sent a federal district court judge a \$2,000 cashier's check while that judge was presiding over a case in which Mr. Helfrich was a party. He invited that judge to cash the check if he could swear on a bible that he had never done anything unethical and had no reason to believe there is corruption in the system. He then reported his offer to multiple law firms and the media.

36. While he had cases pending in the Licking County Municipal and Common Pleas Courts, Mr. Helfrich sent accusatory and defamatory letters to judges who presided over those cases and to their colleagues, which he contemporaneously and subsequently publicized elsewhere.

37. He sent numerous private communications to the judge assigned to the Strickland Common Pleas Court Case without showing that he supplied adverse counsel with copies. This judge finds and concludes that those *ex parte* communications sought to influence that judge's decisions.

38. Mr. Helfrich claims that he sent all those messages to express his views, and that he

had a “free speech” right to express them in that manner. This judge finds and concludes that Mr. Helfrich pursued these practices in an effort to influence or intimidate those judges and the local judiciary in order to enhance his litigation success.

39. From Mr. Helfrich’s demeanor at the vexatious litigator trial, his testimony there, and all the other evidence, this judge finds that Mr. Helfrich enjoys *pro se* litigation as a contest where he can match wits with professionals and inflict pain on those who offend him. He testified that he disfavors hiring lawyers because he doesn’t trust them.

40. From the documents he filed to complain about his lawyers’ performance in defending the Mellon counterclaim, this judge finds that Mr. Helfrich prefers to represent himself because lawyers will not assert his contentions or adopt his tactics.⁴ In other documents he expresses pride that he can perform as effectively as lawyers who charge \$200 per hour. He denies that professional ethics and professional regulations apply to him. He attacks the judiciary and the legal profession to show that he is as competent and moral as they claim to be.

CONCLUSIONS

A. This judge finds and concludes from clear and convincing evidence that Mr. Helfrich’s conduct in or in connection with the cases about which the court received evidence constitutes vexatious conduct within the meaning of R.C. 2323.52 (A)(2).⁵ The described conduct “obviously serves merely to harass or maliciously injure another party” to a civil action; and/or

⁴ For example, he complains bitterly that the lawyers whom his insurer hired to defend the Mellon counterclaim failed to use inadmissible character evidence [See Evid. R. 404(A)] and a juror’s inadmissible affidavit to impeach the verdict [See Evid. R. 606(B).]

⁵ This court’s findings list some examples of Mr. Helfrich’s vexatious conduct, but the record contains others.

the described 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; and/or the described conduct was “imposed solely for delay.”

B. Mr. Helfrich argues that his conduct must have been proper because no judge complained or censured him. This judge’s review of the record and the exhibits contradict his statement, since the evidence reports multiple occasions when a judge complained or threatened to sanction him. However, assuming that no judge expressly objected to his conduct, it may still be vexatious. Like frivolous conduct defined in R.C. 2423.51(A)(2), vexatious conduct may have greater or lesser significance, depending on its frequency, gravity, and effect. Not every frivolous or vexatious act merits sanctions. Some misconduct is better ignored or controlled with a brief remonstrance. Sanctions can disrupt proceedings, so many judges accept lesser misconduct rather than challenging or penalizing it.

C. Some of Mr. Helfrich’s misconduct may have merited prompt judicial response, but the judge at that proceeding may have justifiably disregarded it to facilitate a fair resolution of the real issues. In any event, a judge’s failure to control Mr. Helfrich does not demonstrate that his conduct was acceptable. In this case, this judge finds that the cumulative effect of Mr. Helfrich’s persistent vexatious misconduct requires the controls that R.C. 2323.52 affords.

D. This judge finds and concludes from clear and convincing evidence that Mr. Helfrich has “habitually, persistently, and without reasonable grounds engaged in vexatious conduct” in multiple civil actions. Therefore, this court declares that he is a “vexatious litigator” within the meaning of R.C. 2323.52(A)(3).

E. That finding does not preclude his access to the courts. He has never argued that he

lacks sufficient resources to retain counsel for any litigation needs. A vexatious litigator may pursue a claim with retained counsel, who are better trained and may be subject to more rigorous judicial supervision and disciplinary control than a *pro se* litigant. Indeed, a vexatious litigator may pursue a claim *pro se* if he first demonstrates that he will not abuse process and that there are reasonable grounds for the proceedings he proposes to pursue.



Judge Richard M. Markus, Retired Judge Recalled to Service pursuant to Ohio Constitution, Art. IV, §6(C) and R.C. 141.16 and assigned to the Licking County Common Pleas Court for this matter

THE CLERK SHALL MAIL TIME STAMPED COPIES OF THESE FINDINGS
AND CONCLUSIONS TO THE PLAINTIFF, DEFENDANTS' COUNSEL,
AND THE ASSIGNED VISITING JUDGE